

Highlights: Human Rights Efforts in the Dominican Republic

The Government of the Dominican Republic (GODR) respects human rights, and does not sanction government policies or actions by government officials that fail to respect the laws that protect such rights.¹ This Discussion Paper describes some of the ongoing efforts in the Dominican Republic to ensure basic human rights. It is not a compendium of all activities under the umbrella of “human rights”, does not catalog every effort in the DR by the GODR or others, and does not respond to specific commentary on conditions in the Dominican Republic. It focuses on the topics of human rights groups in the country; trafficking in persons; protection of children against commercial sexual exploitation and labor abuses; regularizing nationality status and nationality documentation; undocumented persons; and fundamental labor rights. It begins with updates on the priorities for President Fernandez’s second term and results in some longstanding, well-publicized legal proceedings.

Updates

Second Term Challenges

President Fernandez’s second term began in August 2008, at a time where domestic challenges confronting growing external challenges. External challenges included increasing energy costs for the energy-importing country, rising food and primary material costs, and the global economic slowdown. Domestic challenges included investing in education, increasing competitiveness and exports, assisting those most in need with health, housing and other services, increasing domestic energy production and transmission capacities, and institutionalizing a culture that does not tolerate corruption. One of his first actions was to propose constitutional reforms that address trafficking in persons, nationality, and gender equality and which now are being discussed in the Congress.²

Resolutions of Judicial Proceedings Against Lead Figures in Baninter and Bancredito Cases

Significant legal proceedings related to the 2003 collapse of Baninter concluded with the Supreme Court’s approval of the conviction of three main defendants. The Supreme Court upheld the lengthy sentences that included the money laundering charge added by the appellate court. Defendants began to serve their prison terms in July 2008. Former president Ramon Baez Figueroa and executives Luis Alvarez Renta and Marcos Baez Cocco began 10 year sentences. On November 28, 2008, former Bancredito bankers Manuel Arturo Pellerano Pena and Juan Felipe Mendoza Gomez began eight-year prison terms for banking fraud. They also will pay a RD\$2.5 million fine once they are released from jail.

Role Of Human Rights Groups In Dominican Republic

Numerous domestic and international human rights NGOs and other entities operate freely in the Dominican Republic. They undertake their initiatives, work with partners and individuals, and publish on human rights issues. Some focus on providing support to persons in the DR, while others are advocacy focused on the DR generally or on a particular issue.

¹ See Ley 437-06, establishing the right of amparo against public authorities and private individuals to protect fundamental rights.

² Tab A: Comparison of select current and proposed constitutional provisions.

With those that focus on providing support, the GODR has taken efforts to collaborate, coordinate, or at least establish information sharing mechanisms to be able to leverage resources for the intended populations. It works with NGOs such as EDUCA (Acción para la Educación Básica) on child labor issues. It supports Llama y Vive (Call and Live), a public information campaign against sexual and labor exploitation that promotes national hotlines for prevention and victim assistance, launched by the Attorney General's office in July 2007 with support from the Ricky Martin Foundation, International Organization for Migration (IOM), and Inter-American Development Bank.³

With advocacy entities, the GODR meets with them, engaging in open and frank discussions. The outreach occurs both in the DR⁴ and in Washington DC, where Embassy officials have met with many of their country's most vocal critics in efforts to establish dialogues and explore commonalities and differences. Other entities appear disinterested in such interactions.

Trafficking In Persons

Trafficking in Persons usually focuses on trafficking for purposes of sexual or labor exploitation. It is not undocumented migration, which may be an individual's action,⁵ or smuggling,⁶ which often involves two or more willing participants in a criminal activity to enter a country. In most countries, a trafficked person is a victim of a crime, while a smuggled person is viewed as a participant in the crime. DR laws prohibit trafficking in persons, among them (specific laws involving children are discussed *infra*):

- Law 137-03 (2003) (Illegal Trafficking in Migrants and Trafficking in Persons), prohibiting all forms of trafficking, prescribing penalties of up to 20 years imprisonment for sex trafficking and fines up to 175 times monthly minimum wage, and making involvement of public officials and death of victim aggravating circumstances⁷
- Law 53-07 (Technology Crime Law) (2007), criminalizing the electronic distribution of child pornography as well as prescribing penalties of 2 to 4 years imprisonment for the purchase or possession of child pornography
- Labor Code, Principle II, prohibiting forced labor
- Penal Code, various provisions

³ Llama y Vive is in 6 countries in Latin America & the Caribbean and, in April 2008, the Washington DC metro area. It only launches in countries that already have all the elements to provide victims' assistance. Free confidential 24/7 hotlines are staffed by a team of trained NGO professionals who channel questions and cases to assistance and law enforcement organizations, as appropriate. Specialized NGOs and experts distribute materials and information to target populations in high risk areas lead local awareness. Media outlets disseminate news and other hotline promotion materials; radio, print, TV and AV materials feature Ricky Martin. See llamayvive.org.

⁴ For example, on March 25, 2009, Labor Minister Max Puig met with an international, inter-institutional delegation to discuss DR-Haiti issues.

⁵ Individuals may enter the country and reside in an undocumented status. That condition, though not legal, is distinct from trafficking or smuggling. Most undocumented persons in the DR have chosen to leave their country of nationality to reside and/or work in the DR. Some have chosen domestic service, prostitution, or other work that may be associated with situations in which trafficked individuals also are involved. And such undocumented residents in the DR may encounter legal, political, economic and social challenges common to undocumented populations around the world. However, they are free to leave the country

⁶ "Smuggling" generally involves the procurement, "to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a country of which the person is not a national or a permanent resident." By definition, migrants cooperate with their smugglers, even seeking them out and paying them. "Smuggling" may become "trafficking" if the elements of force, fraud, or coercion later arise, but only then.

⁷ The preamble includes language from the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children as well as the UN Universal Declaration of Human Rights.

Trafficking includes Dominicans trafficked to other countries as well as trafficking into the DR. Principal destination countries are in Europe, the Caribbean, and Latin America.⁸ Reports document trafficking of Dominican women for domestic service and/or prostitution. Women also are trafficked to Haiti to work in brothels, some frequented by the UN Stabilization Mission peacekeepers.⁹ According to the NGO Center for Integrated Training and Research (COIN, in Spanish) and the IOM, trafficking organizations were typically small groups.

Efforts to eradicate trafficking reflect a commitment from the highest levels of the government and encompass prosecution, protection, and prevention efforts. Most recently, the National Congress approved reforms that give constitutional stature to an express prohibition on slavery, servitude and human trafficking in all forms (Article 32). In October 2007, President Fernandez created a National Commission Against Trafficking in Persons (CITIM), charged with developing and coordinating the national strategy to combat trafficking, collaborate in international activities, and propose appropriate legislative initiatives. CITIM is in the final vetting of the National Action Plan Against Trafficking in Persons and Illegal Trafficking in Migrants (2009-2014) ("National Action Plan") that recommends an ambitious roadmap, concrete actions, and benchmarks for strengthening efforts to combat trafficking.

On prosecution, the Attorney General's anti-trafficking unit established in 2004 coordinates the investigation and prosecution of trafficking cases. Units of the National Police (Human Trafficking Division, established in 2008), the Migration Directorate, the Navy, and the Attorney General's Office (Anti-Trafficking Unit) target trafficking in persons, as does the interagency Committee for the Protection of Migrant Women. While statistics of prosecutions under various trafficking-specific laws are provided, such prosecutions cannot be characterized as the "number of trafficking prosecutions." Criminal laws impose the highest burdens of proof, involve lengthy court proceedings, require victims to remain in the DR until the trial (and perhaps appeals) are completed rather than returning home, and other challenges. Moreover, when traffickers are not large, organized international organizations but small groups, individuals or smugglers, resource required for prosecutions greatly increase. Thus criminal prosecutions under "trafficking laws" are only one indicator of punishment of traffickers and are complemented by other legal means and remedies to punish criminal activities related to, or arising from, "trafficking."

The Attorney General's office reports at least 23 active criminal investigations for illegal trafficking of migrants, and four for trafficking in persons.¹⁰ The GODR also works with other countries on trafficking investigations.¹¹ Examples of recent prosecutions under the criminal Law 137-03, the Law on Illegal Trafficking of Migrants and Trafficking of Persons, include:

- December 2008, a judge in Bani sentenced Orin Clinton Gomez to one year in preventive custody, involving his efforts in bringing three of seven Colombians who were murdered in Paya, by boat to Bani and then taking the cash for the smuggled drugs
- October 22, 2008, the Trial Court Panel of the Court of the First Instance of the Judicial Department of Montecristi sentenced Mariolis Julian Fortuna Peña to 15 years imprisonment for violating Articles 1 subsection f), and 7 subsections a), d), and f)
- October 22, 2008, the Trial Court Panel of the Court of the First Instance of the Judicial Department of Montecristi sentenced Benito Antonio Reyes to 10 years imprisonment for violating Articles 1 subsection f), and 7 subsections a), d), and f)

⁸ See UNDOC, Global Report on Trafficking in Persons, February 2009.

⁹ See UN Security Resolution 1840, para 22 (2008).

¹⁰ Tab B: Illustrative List of Current Investigations.

¹¹ For example, the GODR is jointly working with Swiss authorities on a trafficking investigation involving German nationals; one person has been arrested so far.

- June 4, 2008, the Trial Court Panel of the Court of the First Instance of the Judicial Department of Montecristi sentenced Eladio Simon Valdez Jimenez to three years imprisonment for violating Articles 1 subsection f) and 2
- March 7, 2008, the Trial Court Panel of the Court on First Instance of the Judicial Department of Montecristi, sentenced Pedro Julio Diaz Molina to three years imprisonment for violating Articles 1 subsection f) and 2
- A court in Altagracia issued an arrest warrant for Yeyto Toledo for trafficking of minors to Istanbul
- August 2007, National District prosecutor charged foreign national with trafficking in persons and deported two other foreigners for forcing 14 Haitian women in Santo Domingo to perform lewd and sexual acts before a video camera that were later uploaded and sold via an Internet pornography site based on a victim's complaint
- January 2007, the Montecristi court convicted Dominican organizers of an illegal trip, during which several Haitians died, under Law 137-03 and other criminal statutes, imposing the maximum sanction of 20 years in Reclusión Mayor and a fine of 250 minimum salaries on two defendants under Law 137-03 and homicide laws, and 10 years imprisonment and a fine of 150 minimum salaries on two other defendants

Dominican authorities act against persons who bring undocumented persons across the Haitian border (trafficking or smuggling), and surrender them to the legal system.¹² For example, on December 4, 2008 an Army intelligence unit patrolling the border targeted and detained suspected repeat trafficker Expedito Rodríguez, who was driving a vehicle with 12 men, 4 women and 2 children from Haiti. The undocumented Haitians were released to the Migration Department and returned to Haiti.

In addition to prosecutions under Law 137-03, other criminal laws may provide a legal basis for prosecution. The Attorney General reports that these criminal prosecutions may be preferable when a risk of re-victimization exists. Many more “complaints” or possible trafficking cases are reported than are prosecuted. This reflects the growing awareness of various GODR officials to potential trafficking situations, and the high legal burdens for prosecuting criminal trafficking cases.

- April 2008, a National Police Technology Crimes Department investigation led to the detention of two men, one a minor, for violating Law 53-07 (cyber crimes) after they published doctored nude photographs of the daughters of local officials and other lewd photographs on an Internet site
- 70 human smuggling cases with the persons accused charged with fraud by promising visas usually around Embassies (e.g., U.S., Italy, Mexico); in these cases, 22 defendants were put on probation, 2 were imprisoned for 6 months, 8 were imprisoned for 3 months, 26 were released on bond, and 12 were released

Claims of “Chinese” smuggling operations or victims periodically arise. While details often are ambiguous, one documented case involved a high-level Haitian official in the Haitian consulate in Barahona. In August 2007, the Haitian government launched an investigation into allegations that its consulate was linked to a network smuggling Chinese nationals. Consulate supervisor Pierre Laud

¹² See UNDOC Global Report on Trafficking in Persons, p. 41 (Feb. 2009) (Central America and Caribbean statistics through 2007 are scarce, convictions for trafficking were reported only in 2005 onwards “with the Dominican Republic accounting for the largest number.”).

Lagrenade was suspended, convicted in Haiti on charges of trafficking, and sentenced to 15 months in prison.¹³ Other cases that the DR has prosecuted include:

- Renato Bregu, Albanian citizen, for Trafficking in Persons. In May 2007, two victims lodged charges against Bregu for violation of Law 137-03 for the organization of illegal trips and a Magistrate Judge of the Dajabon Judicial District imposed an order of custody.
- On March 2, 2005, the Supreme Court of Justice found Radhames Ramos Garcia guilty of Illegal Trafficking of Migrants and sentenced him to 18 months imprisonment for Trafficking in Persons involving Chinese citizens.
- Santo Valdez Cuello, Farcoleni Rivera Santana and joint-parties, were sentenced to 20, five and three years imprisonment, by the Court of First Instance of the Judicial District of Santo Domingo.

The GODR has a “Zero Tolerance” policy for officials implicated in such activities. It investigates public officials who allegedly facilitate, condone, or are complicit in trafficking activities or migrant smuggling, and has brought actions against members of the national police, Navy, prosecutors and officials of local governments for violations of Law 137-03. Over the past three years the Migration Directorate has fired 400 inspectors for possible involvement in smuggling and trafficking; other agencies have taken similar actions. Current Migration Directorate policy is to replace removed officials with an officer who recently met the stringent requirements for its training course. Specific examples of actions include:

- Since the beginning of the second Fernandez Administration, 45 immigration inspectors have been removed from their positions; 5 of them are in the legal system and 2 already are under preventative detention; numerous other officials have been suspended or disciplined.
- From August 2008 to February 2009, Major General José Aníbal Sanz Jiminián, Director of General Migration, fired 50 supervisors and inspectors from 5 international airports for allowing persons to leave with false documents, extortion, bribery and other offenses.
- December 2008, a judge in Bani sentenced Orin Clinton Gomez to one year in preventive custody for suspected smuggling in violation of Law 137-03, involving his efforts in bringing three of seven Colombians who were murdered in Paya to Bani, and then taking the cash for smuggled drugs; at least 10 officials of the Navy remain in prison in connection with this matter.
- June 2007, the National District prosecuting attorney filed charges against Doris Altagracia Vasquez, a high-level official in the Ministry of Labor, for involvement in a trafficking scheme that lured citizens with false offers of employment in Spain and Canada.
- The Court of First Instance of the Judicial District of Santo Domingo sentenced the former Mayor of the National Police Rafael Elpidio Fernandez Garcia to five years imprisonment.
- On December 8, Rafael Guillermo Guzmán Fermín of the National Police dishonorably discharged, stripped the uniforms, and led from Police headquarters before a full assembly, two members of a police patrol, former sergeant Obispo Montero Ramirez and former corporal Sandro Familia Paniagua, who detained a Haitian national, beat him and stole EUR37,000 and two passports from him; they also are being referred to the justice system on kidnapping and robbery charges.¹⁴

The former or current sugar-related communities, or bateyes, have been a focal point of complaints about trafficking in persons for purposes of labor exploitation.¹⁵ However, the number of workers in this sector

¹³ See Tab B: Illustrative List of Investigations and Prosecutions

¹⁴ <http://www2.elnuevodiario.com.do/app/article.aspx?id=131766>.

¹⁵ But even most critics recognize that today most Haitian undocumented workers knowingly, voluntarily and illegally cross the border, are not brought under false pretences, and are technically able to leave worksites.

continues to decrease with less than 10,000 workers required for the most recent harvest. Increased government labor enforcement, mechanization of sugar production, the large population already residing in the DR, and cessation of government-owned plantations have reduced claims. Moreover, in 2005 the sugar industry signed written commitments to not use the *contingente* system of contracting laborers, which had presented opportunities for abuse. Concurrently, the GODR Migration Service communicated that the sugar companies should obtain workers from nearby communities.

Anti-trafficking training for government officials and the communities is regularly provided. The General Directorate of Migration regularly holds training sessions for new immigration officials and trafficking is included in the program and course given by the Technical Migration School for aspiring Migration Control officials. The GODR is participating in the project “Strengthening of the National and Regional Training for the Prevention and Combating of Trafficking of Persons in Latin America” of the UN Office Against Drugs and Crimes. Under the strategic theme of Rule of Law, the project plans to apply conventions and protocols as well as encourage international cooperation in areas of criminal justice.

As in other countries, counseling, assistance and protection to trafficking victims both overseas and in the country is provided by the GODR, NGOs, and religious and international organizations. And as in many countries, trafficking exists in large part because of poverty. Thus many NGOs and others report that “victims” often initially knowingly enter into situations that may become abusive, exploitative or otherwise transform into ones that involve fraud, coercion or force and so described as “trafficking.”

Trafficking from the DR to other countries involves domestic service or prostitution. COIN and the IOM counsel women planning to accept job offers in Europe and the eastern Caribbean about immigration, health, and other problems, including the dangers of trafficking, forced prostitution and forced domestic service. COIN administers the Center for Health and Migration Information for Migrant Women (CIMS), which conducts community education campaigns in high-risk areas and populations on these issues as well as legal work requirements. The Ministry of Foreign Affairs has developed a worldwide network of consular officers trained to recognize and assist Dominican victims of trafficking.

The GODR has created a network in the Dominican Republic to provide trafficking victims support - shelter, legal assistance, legal protection, medical care and services, and job skills training. It is not an *ad hoc* array of organizations, but a system that leverages existing missions, expertise, and resources. Primarily shelter, but also reintegration, medical and counseling services, is provided by the “Red de Religiosas contra la Trata” of the Adoratrices sisters. They have two shelters, in Haina and in San Pedro de Macoris, and the GODR provides some financial support for the services. With the support of the Ministry of Women, COIN directs the Centro de Acogida that works with migrant, trafficked, and/or returned women offering services such as information, medical, and psychological attention, and legal and practical support. COIN provides victims, at no charge, legal advice and follow up, legal protection when needed (through coordination with the PGR), medical and laboratory services, counseling and psychological services, and social services and training to develop work skills that help prevent return to exploitative situations as the only option. The police and Prosecutor’s Office often refer adult victims of trafficking to COIN.¹⁶ The GODR has released some foreign trafficking victims into IOM custody after a brief processing detention, instead of keeping them in jail or immigration detention centers prior to deportation. The Llama y Vive hotline provides both provides support through information on prevention of trafficking as well as a mechanism for gathering tips and formal accusations.

NGOs, the GODR and others are active in a range of prevention activities. Information campaigns of GODR agencies on the dangers of and penalties for trafficking include:

¹⁶ UNDOC, Global Reports on Trafficking in Persons, p. 139, February 2009.

- Attorney General La Ley Pega Fuerte (legal penalties)
- Migration Directorate No Al Comercio Humano (legal prohibitions)
- Navy Campaña Contra Los Viajes Ilegales (illegal trips)
- Secretary of State for Women Impresión Popular de la Ley 137-03 (understanding law)
“Mujer Conoce Tus Derechos” (anti-trafficking) (radio)

The Instituto Nacional de Formación Técnico Profesional (INFOTEP) and the GODR’s Education and Prevention Unit have initiated courses in the Boca Chica community, in which persons learn skills such as food preparation and domestic skills.

The GODR and various organizations continue to address problems of sex tourism, a business generally supported by foreign tourists in high volume tourism areas such as Las Terrenas, Sosua, and Boca Chica. NGOs conducted programs on prostitution and child sexual exploitation for hotel and industrial zone workers, male and female prostitutes, and other high-risk groups.

Protection of Children: Commercial Sexual Exploitation And Labor

The GODR continues to mainstream these issues into broader policies and plans. The proposed constitutional reforms reiterate the government’s obligation to protect minors against sexual abuse and sexual, commercial, labor or economic exploitation. (Article 45) Representatives from the Ministry of Labor, labor unions and employer organizations have signed a tripartite declaration for the National Program of Decent Work, which supports the National Plan to Eradicate the Worst Forms of Child Labor. The Ministry for Youth represents the interests of persons ages 15 to 35 in relevant GODR agendas. The National Council for Children and Adolescents (CONANI), a public agency, oversees administration of the Minors Code. It works with various GODR agencies, each with their own resources and budgets, to address issues under their jurisdictions related to the protection of minors.¹⁷

Projects that target vulnerable or at-risk children often do not draw distinctions on whether the risk is of commercial sexual exploitation or other labor risks. For example, in January 2008 the GODR and U.S. Department of Labor (DOL) announced their support for “Educando para combatir la explotación laboral infantil,” administered by the Dominican NGO EDUCA (Acción para la Educación Básica), that will target education services through the existing Espacios para Crecer and vocational and micro business programs to 10,000 children involved in, or at risk of involvement in, the worst forms of child labor, which includes commercial sexual exploitation and other work situations, consistent with the priorities established by the GODR’s National Plan.¹⁸ This program and other such programs do not attack only a particular form of child labor situation.

The DR legal framework expressly protects children. In addition to laws that prohibit trafficking of all persons, the DR has specific protections for children, among these:

¹⁷ CONANI does not receive at least 2% of the national budget and a minimum of 5% of municipal government budgets often are not devoted to projects to benefit children, as contemplated by the Minors Code. Numerous other Dominican laws include percentage allocations (e.g., Education, UASD, JCE, National Congress, Judiciary, Ministerio Publico, Youth Ministry, Camara de Cuentas), which also are not met. Combined with national debt and health commitments, these represent over 80% of the total federal budget, leaving little for other programs.

¹⁸ The project will have distinct efforts in: border zone, Cibao, agriculture and tourism sectors in the eastern region, and Boca Chica, Samaná, Puerto Plata, as well as the urban areas of Santo Domingo, Santiago, San Francisco de Macorís, San Pedro de Macorís, and Puerto Plata. Participating entities include: UCNE, Catholic Relief Services, FUDECO-Save the Children, Plan Internacional, Vision Mundial, Instituto Dominicano de Desarrollo (IDDI), FUNDAPRIN, SAMANENSES and FUNDAZUCAR.

- Labor Code, Articles 410 and 411, criminalizing child prostitution and pornography, prescribing penalties for sexual abuse of children of 20 to 30 years imprisonment and fines from 100 to 150 times the minimum wage
- Law 136-03, Articles 34 – 44 (Code for Protection of Fundamental Rights of Children and Adolescents), assigning high priority to the rights of children and adolescents, defining legal obligations and responsibility for children and adolescents, coordinating design and execution of policies, services and assistance, and defining obligations of the government and family and participation of NGOs
- Law 53-07 (2007), criminalizing the electronic distribution of child pornography
- Labor Code, Articles 17, 245 - 254, 446, 720 – 724, prohibiting employment of children younger than 14 years, restricting employment of children ages 14 – 16, defining fines and legal sanctions against firms employing underage children
- Decrees, e.g., 566-01 and 59-05 establishing the responsibilities of the National Steering Committee Against Child Labor
- Resolutions, e.g., 37-05 (Provincial, Municipal and State Committees for Eradication of Child Labor); 30-93 (work by children without 14 years of schooling)

The DR also is a party to various international labor conventions that prevent or protect child workers.¹⁹

The DR is engaged in prosecution, protection and prevention efforts to combat the commercial sexual exploitation of children. As one example, three foreign nationals currently are in different phases of judicial proceedings arising from investigations by the Attorney General's office and the Tourism Police. In the DR and elsewhere, prosecution of such cases is complicated by family pressures, credibility issues, and social stigmas.²⁰

¹⁹ E.g., Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; Hague Convention No. 28 on the Civil Aspects of International Child Abduction; Hague Convention No. 33 on Protection of Children and Co-operation in Respect of Intercountry Adoption; UN Convention on the Rights of Children; ILO Convention 90 (night work by minors, non-industrial); ILO Convention 81 (Labor Inspection) and 1995 protocol; ILO Convention No. 138 (minimum employment age); ILO Convention No. 105 (Elimination of Forced and Compulsory Labor); and ILO Convention No. 182 (Worst Forms of Child Labor).

²⁰ Allegations have been made regarding Haitian children trafficked into the DR. This difficult and complex situation reflects the motivations for and parties involved. PADF Deputy ED Coughenour observes that extremely poor Haitian parents often give up their children thinking that they will have a better life in another family's home. "Unfortunately, sometimes unscrupulous adults force children to work, become prostitutes or get involved in gangs...Some kids may end up in other countries." See "Congress Told of Exploitation, Trafficking of Impoverished Haitian Children," news.yahoo.com/s/usnw/20090519. "Needed But Unwanted, Haitian immigrants and their descendants in the Dominican Republic," CIIR, 2004, pg. 62, reports: "Haitian children begging on street corners in Santo Domingo and other major cities such as Santiago, and the smuggling of Haitian minors into the county, has been a new cause for concern. A 2002 study revealed that these minors are smuggled in by organised networks, with the complicity of military personnel on the frontier...Over 2,000 young people come across the northern border annually in this way. Normally this takes place with the knowledge and consent of the children's parents, who pay the smugglers – often people known or recommended to them. The parents say that the children are cared for in the Dominican Republic by relatives or people they know and trust. They also point out that in poor households it is normal for the children to work during the long school vacation. However, almost all the youngsters concerned are involved in exploitative work, in the rural areas, in the informal sector or, in the worst cases, in gangs as beggars. There are no known cases of sexual exploitation....Most of the children live in extremely vulnerable circumstances. ...The children are sent over during the three-month summer holiday and return home to their family for the beginning of the new school year. However, of the sample surveyed, one-third stayed on in the Dominican Republic, working in the urban informal sector or in agricultural labour." Similarly, allegations have been made of Dominican families "adopting" Haitian children, but then treating them as servants. A 2004 fieldwork-based study uncovered no evidence that children are kept in Dominican homes as slaves, evidence of trafficking such children,

On protection and assistance, the GODR created the National Directorate for Assistance to Victims that coordinates official and NGO efforts to assist child victims of violence and abuse. Programs provide psychological support and medical assistance, return children to classrooms, and reunite children with their families and communities when possible. Victims have access to a Casa de Acogida from the time they come into contact with the Attorney General's office. The Commission Against Commercial Sexual Exploitation's program of victims assistance implemented by Safe Houses specializes in caring for this population and provides both assistance and training to avoid re-victimization. Church-run shelters also provide refuge to children who escaped prostitution.

On prevention, the Ministry of Women, in conjunction with the Office of the First Lady, has launched a program focused on street children that seeks, among other goals, to provide education and services so children are removed from situations in which they are, or could become, victims of sexual exploitation. In November 2007, it presented the Comprehensive Program for the Protection of Street Children and Adolescents in the Dominican Republic (Lineamientos de Política de Protección integral de niños, niñas y adolescentes en situación de calle en República Dominicana). A National Police organized course (with support of UNICEF and CONANI) trained 1,200 police officers on the subject of children's rights and prevention of sexual exploitation.

The Ministry of Labor, in collaboration with the ILO's Program for the Elimination of Child Labor and others, offered programs to combat the commercial sexual exploitation of minors in popular tourist destinations such as Boca Chica, Sosua, and Las Terrenas. Notices are posted in Santo Domingo's International Airport of the Americas listing the penalties under Dominican law for the criminal offense of the commercial sexual exploitation of children or adolescents. Public campaigns such as "Not for sale," on commercial sexual exploitation have heightened awareness on these issues.²¹

The National Association of Hotels and Restaurants (ASONAHORES) signed the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism sponsored by UNICEF and ECPAT (End Child Prostitution, Pornography and Trafficking of Children for Sexual Purposes). However, not all hotels are ASONAHORES members, particularly smaller or independent establishments. For several years, training has been provided to workers in the tourism industry through the module "Role of the tourist sector in the prevention of abuse and commercial sexual exploitation of children and adolescents," based on material produced by the World Tourism Organization. Individual companies also are active in these efforts, including a national campaign against the commercial sexual exploitation of children and adolescents by Burger King restaurants and advertisements in Palacio del Cine cinemas.

The Prevention Unit of the Department of Alien Smuggling and Trafficking in Persons, in coordination with the Ministries of Labor and Education, has outreach at schools around the country. Courses warn children of the dangers of alien smuggling, commercial sexual exploitation, and trafficking.

The GODR also is active in regional efforts. "Regional Features for the Repatriation of Victims of Trafficking and Vulnerable Populations" was approved in the framework of the Regional Conference on Migration, Population Process. It attempts to assure that assistance responds to the interests of the child or adolescent, and the close collaboration between the countries for identification and confirmation of

or involvement by ethnically Dominican brokers or traffickers in intra-Haitian arrangements. Placement of young Haitians in Dominican homes is more likely in the poorer, border region and reflect the greater sense of familiarity between Dominicans and Haitians, be a response to fewer Dominican women willing to work as domestics, and/or reflect a conscious choice by Haitian parents seeking better economic conditions and decreased vulnerability to sexual abuse for their children.

²¹ Implementation Plan for the White Paper Recommendations 2007-2010, April 2007 (available on ILO website).

nationality, determination of the situation of the relative(s) to whom they will return, and protection measures for social reintegration. In June 2008, a Dominican government delegation participated in the workshop “Strengthening Regional Cooperation for the Reintegration of Trafficking Victims” in Managua, Nicaragua, that identified minimum standards to produce a regional action project on reintegration of trafficking victims. Another regional project aims to withdraw 713 children and prevent 657 children from commercial sexual exploitation in the region.

The GODR likewise is engaged not only in combating illegal child labor but also in increasing the capacity of young people to enable them to avoid exploitive conditions. The 2008 budget almost doubled the allocation for implementation of actions to combat child labor (RD \$12,661,465, from RD \$6.7 in 2007).²² Despite the global economic situation and domestic financial demands, the 2009 budget maintains the same allocation. The National Strategy for Eradication of Worst Forms of Child Labor in the Dominican Republic (2006-2016) sets objectives, identifies priorities, and assigns responsibilities to efficiently address exploitive labor and significantly reduce the number of child laborers by 2016.

The Ministry of Labor enforces child labor laws. It has 203 trained labor inspectors located in 38 offices, six Safety and Hygiene officials, a group of labor attorney generals, and department of judicial assistance officials. In the first half of 2008, 40 justice agents participated in a seminar to train trainers on the worst forms of child labor, two workshops were held for judges and members of the Public Prosecutor’s Office on eradication of child labor, and 16 central and local train the trainer workshops were held with 779 participants.²³ Globally, addressing labor in informal sectors, small businesses, private households and agriculture sectors often present the greatest challenges. Children may accompany parents who work in agriculture, as schools often are not in session full days and parents often have nowhere else to leave them. Sometimes children work to help support families that exist on the margins. Regular and special (request driven) inspections occurred in the sugar mills of the entire national territory, and the Ministry of Labor nonetheless conducts repeat inspections during peak production seasons. In the first half of 2008, 11 inspections were conducted in San Pedro de Macorís (8), La Romana (1) and Barahona (2). In 2007, labor inspections were conducted in Independencia (8), San Cristobal (4), La Romana (3), and San Pedro de Macorís (18), and Health and Sanitary Division inspections in San Pedro de Macorís and La Romana in December 2007. In 2007, Ministry of Labor site inspections confirmed child labor was not used on the inspected sugar consortium’s fields.

The Ministries of Labor and Education continue to support the Combating Child Labor through Education program, which established several camps that hosted large numbers of children and adolescents. In March 2009, the Ministry of Labor and CONANI launched a program to train and give productive work experiences to youths ages 16 to 19 who will then be enrolled in the Ministry’s national electronic job bank. Other projects under the Ministry of Labor include Proyecto Desarrollo Juvenil²⁴ and the Plan de Empleo Juvenil in development.²⁵ As part of its Solidarity Program, the Vice Presidency has established a monetary transfer program for extremely poor families, with the stipulation that their children are removed from labor and are enrolled in school. The Agricultural Bank includes a clause in its loan

²² Secretaría de Estado de Economía, Planificación y Desarrollo, Ley de Gastos Públicos del Gobierno Central 2008.

²³ Verification Report on Implementation of the White Paper Recommendations, pages 94 & 103, February 2009.

²⁴ The Youth Development Project of World Bank Project P096605 (2006) targets improving the employability of poor at-risk youth. It is providing increased first work experiences for up to 28,000 at-risk youth with 1,400 training courses and internships that promote entrepreneurship and self-employment, with over 50% of the resources for poor women of which over 60% have been single mothers, and strengthening and expanding “Second Chance” programs to provide a return to basic and secondary education.

²⁵ The latter is with the ILO. See ILO Study, Juventud y Trabajo Decente y Las Vinculaciones Entre Trabajo Infantil y Empleo Juvenil in Centroamerica, Panama y Republica Dominicana, p. 109, October 2008.

agreements that prohibits recipients from using child labor and guarantees that they send their children to school. The GODR coordinates with various NGOs as well as the US DOL in projects.

On prevention of child labor, the Ministry of Labor and other government institutions, as well as organizations from civil society, collaborate in programs to combat child labor with each other and with the ILO's Program for the Elimination of Child Labor and other international labor organizations. In March 2008, INFOTEP and EDUCA agreed to implement a program that will provide technical training to 2,500 young people who are in vulnerable circumstances. In January 2008, the US DOL and GODR Ministries of Labor and of Education launched a \$4 million project to support public-private partnerships aimed at preventing hazardous child labor by withdrawing and preventing 8,500 children from exploitive labor. Implemented in collaboration with EDUCA and INTEC, a leading university in the Dominican Republic, it will improve the quality of and access to basic and vocational education, and develop corporate codes of conduct in sectors prone to child labor through public-private partnerships. The Labor Ministry is in the second phase of a USD 2.7 million 39-month ILO-IPEC program that aims to withdraw 2,900 children and prevent 2,200 children from exploitive labor.

DevTech Systems recently completed a successful 4-year USDOL supported project that withdrew over 3,700 children from exploitive child labor, prevented over 1,800 children from entering the worst forms of child labor and enrolled these children in transitional education programs, vocational programs, or the formal education system.²⁶ It targeted hazardous agriculture, child commercial sexual exploitation and urban street children in the regions of Constanza, San Francisco de Macoris, Cotui, Pimentel, Nagua, Boca Chica, Sosua, Caberete, Las Terrenas, Santiago, and Santo Domingo. To build capacity to improve labor law compliance among the DR-CAFTA partners, USDOL is providing US \$2.6 million for a project to strengthen outreach efforts in the agriculture sector in the region. Public campaigns also have heightened awareness on child labor issues, including "This isn't a game," on child domestic work and "I'm not working anymore," on hazardous child labor in the agricultural sector.²⁷

Special attention has been given to programs in the bateyes, such as the Labor Ministry's program "Action On Child Labor" for eight bateyes in the provinces Barahona, Bahoruco and Independencia. Established through Visión Mundial República Dominicana, the program addresses trafficking, health conditions, and work accidents by providing options through school and recreational programs, and medical and legal assistance and training. Other programs offer technical training, such as INFOTEP courses; Dominican Education Plan (coordinated and executed by Ministry of Education); Student Merit Program (coordinated by Ministry of Education); and Student Assistance Card program (coordinated by Ministry of Education). A sugar consortium, in coordination with IDDI and FUNDECO-Save the Children, added 8 Espacios para Crecer facilities in the sugar communities, benefiting an additional 370

²⁶ DOL Final Evaluation of Combating Child Labor through Education in the Dominican Republic Project, June 15, 2007 ("The ... project has not only been successful in quantitative terms, but has also contributed to a greater awareness and changes in attitudes and practice in children, parents, community leaders, and teachers regarding the importance of education and the dangers and risks of child labor. ... The project developed and implemented a creative, innovative, and low cost approach to provide educational opportunities to children engaged in or removed from child labor called Espacios para Crecer (EpC). In terms of vocational training, the project has reached its target and offered a wide variety of courses to parents and adolescents.... The project has incorporated a sustainability strategy from the beginning in making this a community-based project... [Also] local municipalities have been supportive of the project and some have contributed to the project in the form of financial donations. In other cases they have provided transport for children to and from EpC, or contributed to the incentives for the facilitators. In Barrio La Mosca in Santiago the municipality played a vital role negotiating the construction of a new school with SEE. In Las Terrenas, Fundación Azucar successfully pressured the local government to earmark a certain percentage of the local budget for the protection of children as stipulated by law...").

²⁷ Implementation Plan for the White Paper Recommendations 2007-2010, April 2007 (ILO website).

students, as well as distributed 5,000 flyers to underage persons on their rights.²⁸ Thus a variety of domestic and internationally-supported programs are working to provide options to child labor and to develop work skills for later, productive employment.

Regularizing Nationality Status

National status questions primarily have focused on two groups: Dominicans without documentation and children born to undocumented parents.

Conservative estimates are that more than 1,000,000 Dominican citizens do not have birth certificates or identity credentials, which is at least 12 percent of the Dominican population. In the poorer regions of the Dominican Republic, up to 25 percent of Dominicans lack identity documents. This is not uncommon, as 20-25 percent of the population in Latin America is in this situation.

The Dominican Constitution grants citizenship to persons born in its territory, with two exceptions -- legitimate children of foreign diplomats posted to the Dominican Republic and children born to foreigners in transit. Analyzing the status of a child born to persons who were not in the Dominican Republic in a legal status, the Supreme Court of the Dominican Republic concluded that such children cannot obtain greater rights to Dominican nationality than children born to parents in a legal "in transit" status. Contrary to many short-hand characterizations of the decision, the Court did not opine that children born to undocumented parents are denied Dominican citizenship because their parents are "in transit." The proposed constitution confirms this interpretation. The Supreme Court also observed that under the nationality provisions of the Haitian Constitution, children born in the Dominican Republic to Haitian parents are not "stateless."

Dominican citizens can document their nationality with an official birth certificate (acta de nacimiento). Registration of birth and issuance of identity documents to Dominicans is a function of the Junta Central Electoral (JCE), an autonomous government agency whose members are appointed for four-year terms by the Senate.²⁹

Like countries such as Spain, the Bahamas and Portugal, the DR has a late registration process for births that are not registered within 60 days as required by Dominican law. In the past, this process was cumbersome, time consuming and, unfortunately, sometimes unpredictable. Shortcomings have been addressed by increasing the number of local offices that can process applications, regularizing administrative processes, initiating a program to reach children enrolled in primary schools,³⁰ equipping Specialized Units for Late Declarations that inaugurated its first mobile unit in November 2007 in Salcedo, Hermanas Mirabel province, and other steps.³¹ They accept applications in more remote regions of the country, and remain as long as necessary to review and adjudicate them. The JCE reports that more than 71,000 late registrations have been filed since late 2007: almost 10,000 in the Central and satellite

²⁸ Verification Report on the Implementation of the White Paper Recommendations, February 2008-July 2008, pages 103 & 116, February 2009.

²⁹ See Resolution No. 03-2007, establishing a system for career officials in the JCE and January 2007 regulation taking control of the Civil Registries, establishing official salaries, and eliminating the private contracting of these services.

³⁰ The JCE and Ministry of Education together are implementing "Numero Uno por Vida," that includes an effort to identify and document some 18,000 children in public schools reported as lacking birth documentation. To date, the program has reached over 160,000 students in public and private schools.

³¹ www.jce.do/regcivil. Mobile vans are located in Provincia La Romana, Municipio Los Alcarrizos, Provincia San Juan de la Maguana, 1ra. Brigada Ejercito Nacional, DN, and Provincia Puerto Plata. The JCE regularly announces the routes/location for the mobile vans in these communities.

offices and over 60,000 in mobile registries. The National Assembly and Inter-Institutional Commission for Reform of the Administration of Justice for Children and Adolescents (CEJNNA - Comisión para la Ejecución de la Justicia de Niños, Niñas y Adolescentes) support UNICEF's efforts to encourage late registrations of children (e.g., "Yo Tengo Derecho a una Identidad" launched in January 2007). In December 2008, President Fernandez signed legislation approving a World Bank loan to enable the JCE to reach a population of 400,000 mostly poor, rural Dominicans who never registered their births, and so may have been excluded from some public services and assistance.

The GODR recognizes the need to further strengthen the process by which births are registered. Notable recent GODR actions include:

- In January 2009, Ministry of Public Health and Social Assistance (SESPAS) issued Resolution No. 18 initiating program to issue Certificates of Live Birth, an official document certifying that a live birth in the Dominican Republic and the basic document required to register a birth at the Civil Registry Office, to all Dominicans and foreigners at public and private health centers throughout the country, which will include the parents' identification data, information on the newborn, and administrative data on the facility where the birth occurred
- In October 2008, the JCE issued instructions to Civil Registries that applications for children age 16 and under are to be processed without requiring ratification by any court or notarial act, thus avoiding backlogs³²
- In October 2008, the JCE announced that it will establish official birth registration offices in 51 hospitals throughout the country, which will cover about 80 percent of hospital births to address under-reporting or non-reporting of births. Between 2006 -2008, birth registrations were declared in JCE delegations in Maternidad Nuestra Señora de La Altagracia (22,853), Maternidad San Lorenzo de Los Mina (7,554)³³ and Hospital Dr. Luis Eduardo Aybar (9,060) in Santo Domingo as well as hospitals in Santiago (7,765), La Romana (8,257), San Francisco de Macorís (9,268), and Barahona (5,471).

Evidencing the continuing commitment to an efficient and effective civil registry, in February 2009, the JCE hosted the "International Meeting of Civil Registry, Identity and Migration Administrators." The goal was to confront common regional challenges with the exchange of ideas, understanding of experiences, assimilation of best practices, and introduction of improvements to registration systems. The JCE Chief Magistrate and the Interior and Police Minister co-hosted the event attended by representatives of 21 nations as well as the Secretary General of the OAS.

The GODR recognizes the need to ensure integrity and security of nationality documents. As part of the revamping of the civil registration system³⁴ that will provide secure, digital credential to all Dominican citizens, serious irregularities have been uncovered, often when individuals request copies of documents. For example, JCE information reports detection of irregularities in 2,416 cédulas issued between 1994

³² See JCE reports that courts routinely confirm JCE decisions; MUDHA President Sonia Pierre condemned the new initiative as an abuse of power that allows the JCE to annul birth registrations without review; Ley 218-07, creating a 3-year "amnesty" period (2007-2010) for children under age 16 from late registration requirements that otherwise could impede registration (e.g., certifications that increase costs).

³³ In 2007, the JCE published Resolution 8-2007 which allowed minors to obtain their cédulas of minority in order to declare their children. Every day 15 to 20 babies in this hospital are to mothers who are minors.

³⁴ The process of obtaining biometric data for new cédulas began in October 2008. The JCE has over 100 mobile registration centers, its offices, and is reaching out through churches to encourage applications.

and 1997 in eight registries.³⁵ The cédulas correspond to 442 Chinese, 331 Italians, 316 Germans, 254 Americans, 162 Spaniards, 133 Cubans, 93 Colombians, 82 Haitians and 77 Swiss.³⁶ These cases often come to light when an individual is unable to transact banking or vote because duplication or data inconsistency is detected. High profile cases of boys who are offered major league baseball credentials but lack citizenship documents from their countries of nationality (often Haiti) or have Dominican credentials that appear to be invalid also have appeared in the press. A sampling of JCE cases in which Haitian nationals used legitimate documentation of Dominicans to solicit a cédula indicates the investigation of these cases depend on their complexity, and have taken from 30 days to over a year.

Some problems exist because some civil registry offices were lax in allowing officers to irregularly issue official documents, while others arise from fraud. Law enforcement officials investigate cases of sale of forged and fraudulent documents. As a recent example, the National Investigation Department arrested Reynaldo Melchor Alcantara Pozo for forging and sale of irregularly-issued birth certificates. When arrested, he had nine Haitian passports, 45 late birth declarations, a fake cédula, and a fake Navy ID card. The implementation of the JCE's "Circular 017" of May 2007 instructs JCE employees to closely examine birth records or other documents relevant to a person's civil status, given prior irregularities in birth registrations. Various governments (including the USG) have expressed concerns about apparently fraudulent Dominican documents that have been presented to them.

One specific situation that has received much publicity, but often is cited in factually and legally distinct circumstances, is a 2005 decision of the Inter-American Court of Human Rights, an autonomous judicial institution of the Organization of American States. Yean and Bosico vs. Dominican Republic involves two children of Dominican mothers; the children had not received birth certificates. However, the GODR issued their birth certificates in 2001, before the case was submitted by the Inter-American Commission on Human Rights to the Inter-American Court in 2003.³⁷

Another well-publicized situation supported by a grant from the RFK Foundation is of Sonia Pierre, who alleges that the DR government threatened to annul her Dominican birth certificate. Ms. Pierre was born to a Haitian mother in a bateye. In her situation, a minority political party had requested the JCE to investigate the legal status of her Dominican nationality. In compliance with the law, preliminary investigations were carried out, with the result that the President of the JCE publicly stated that the statute of limitations barred any and all legal proceedings, regardless of whether hypothetically any grounds would have existed for any legal action regarding her nationality status.

Undocumented Persons In The DR

The law provides for freedom of movement within the country, foreign travel, emigration, and repatriation.³⁸ Yet, the Dominican Republic faces significant challenges as a result of immigration - legal and undocumented (often involving many years of residing in the DR).³⁹

³⁵ In February 2009 authorized birth certificates and other civil documents to be issued regardless of whether minor mistakes exist in registry books. Before then, those needing a document had to obtain corrections through a lengthy and costly (up to RD\$20,000) court procedure for the correction.

³⁶ In 2006-2008, the majority of cédula cancellations were because a person dies (95%); less than 4% were for false data or use of legitimate data by another applicant.

³⁷ Some NGOs claim that issuance of the birth certificates did not satisfy the claims of the lawsuit, e.g., compensation for one-year of not attending school, a public apology, and other broad regulatory changes. Statements of Sonia Pierre on behalf of MUDHA, which represented the claimants.

³⁸ See also DR – Haiti Agreement on Repatriation, renewed 1999, defining repatriation procedures.

Its challenges have been made more daunting because of the severe economic, social, security, political, and environmental crises in which its island neighbor Haiti has been embroiled for over two decades. Haiti's situation perhaps is best described by UN Security Council Resolution 1542 of 2004 that explains the basis for a Stabilization Mission in Haiti: the "existence of challenges to the political, social and economic stability of Haiti and determining that the situation in Haiti continues to constitute a threat to international peace and security in the region."⁴⁰ Not surprisingly, facing poverty, insecurity, and a lack of rudimentary basic services and employment many Haitians enter the Dominican Republic over the 243-mile land border. Most sources place the number of Haitians in the Dominican Republic between 800,000 and 1,000,000, or up to 11% of the DR's total population. The GODR recognizes that some Haitians may face serious problems in the Dominican Republic.⁴¹

While the large undocumented population⁴² often seek work in the informal sector or temporary situations (e.g., construction, domestic service, tourism), the Supreme Court in 1997 held that a foreign worker without legal papers has the right to take legal action to make a claim for unpaid wages.⁴³ Labor Courts frequently rule in favor of workers who take legal actions to protect their labor rights.⁴⁴ Dominican law also contemplates issuance of carnets for identification of temporary workers in sectors of the country that face a shortage of that type of worker, with some exceptions.⁴⁵ These employers must comply with legal obligations on labor rights and conditions, provision of employee information, transportation, and repatriation upon expiration of the permit. Migration officials recently discussed issuing such carnets to agricultural workers in the northeast region of the country for the season.⁴⁶

Documenting births of non-Dominicans has been an issue. The General Law on Migration Law 258-04 and Resolution 02-2007 (April 2007) establish an alternate birth registration process for persons who are not entitled to Dominican nationality to enable those children to obtain nationality papers from the appropriate country. Children of "non-resident" mothers can receive constancias de nacimiento (certifications of birth) that allow them to be registered in a "Foreign Registry Book." Children can use that to obtain their official birth certificates from the governments of their nationality. From January to September 2008, 104 births were entered in this registry. Of these, the overwhelming majority – over 90 – were Haitian nationals. To facilitate registrations, the JCE has announced that it will work with Haitian officials to expand locations in the Dominican Republic where the Government of Haiti can record births

³⁹ E.g., In 2005-2006, GODR provided educational services reached over 18,000 Haitian nationals - almost 2,000 persons in adult education, but the majority for basic education (almost RD190 million). In 2008, its public hospitals provided 595,233 free consultations to foreigners, 98% to Haitians, costing about \$16 million.

⁴⁰ See also Haiti, Fourth Review Under the Three-Year Arrangement Under the Poverty Reduction and Growth Facility, etc., IMF Country Report No. 09/77, March 2009.

⁴¹ In alleging that the DR is "racist", a July 2007 denial of entry to a US Embassy employee into a discotheque often is cited. However, usually omitted is that a judicial order closed that club for 3 months while an investigation of the incident occurred and the guilty were detained.

⁴² Actual numbers and earnings of undocumented persons working in particular sectors are difficult to determine, but studies such as one by the Central Bank provide factual context. It concluded that the construction sector in total generates about 256,000 total jobs, with an average daily salary of US\$300 - \$280, which by law will be 5% higher than the legally established minimum salary.

⁴³ A worker who cannot afford an attorney can request legal representation of a lawyer from the Ministry of Labor. The criteria is economic need; documented or undocumented status is not a factor.

⁴⁴ E.g., Labor Court of San Pedro de Macoris (east) Judicial District recently ruled for 500 Haitian braceros who years ago filed a lawsuit against a private sugar consortium seeking formalization of their labor contracts, and rejecting arguments that the braceros lacked identity and electoral cards and that the workers were not regular employees. After an appeal, the trial is now ongoing.

⁴⁵ Law 285-04, Chapter III, Section XI (not in tourism or in most free zones). See also Consorcio Azucarero Central, working with the Migration Department, provides carnets to its workers.

⁴⁶ www.hoy.com.do/el-pais/2009/1/28/264443/Carnet-para-trabajadores-agricolas-haitianos.

of Haitians. At the same time, the GODR faces continuing challenges with false documents presented by mothers giving birth in Dominican hospitals.⁴⁷

The large undocumented population imposes financial burdens on the GODR. Nonetheless, many basic services are provided regardless of immigration status. Recently, the Director of Nuestra Señora de la Altagracia Maternity Hospital in Santo Domingo, the country's largest public maternity hospital, reported that 24% are Haitian, and that 20 of 80 births on average every day are to Haitian mothers. After Haitian patients, the next largest foreign population is Colombians, followed by other countries. It treats patients without discrimination between locals or foreigners. Treatment of Haitian nationals often costs more on average because they are more likely to present with complications from diabetes, hypertension or severe anemia and remain at the hospital for up to 40 days. "Normally, five or six women arrive at the same time with an advanced delivery. They bring them on a bus and leave them without a single relative to support them."⁴⁸ In addition to health care services, education is provided to all children through eighth grade without regard to immigration status.

Of course nationality and immigration issues are not unique to the Dominican Republic. The U.S. press regularly reports on the plight of undocumented persons in many countries of the world, including the United States, where children encounter difficult dilemmas because of choices their parents made. As one student explained in "Arizona Law Takes a Toll on Nonresident Students": "A lot of people I've grown up with have gone through that whole thing. They're raised in the American educational system, and now they have no future. These are people who have basically lived in America their whole lives, know nothing else, and now their shot at the American dream is gone." New York Times, January 27, 2008.

"Functional" statelessness may arise because of a person's lack of documentation, longstanding adverse conditions in the country of nationality, and/or restrictive nationality laws in the country of citizenship. While many undocumented Haitians residing in the DR may find themselves in this situation, the same might arise for citizens of any nation that has nationality restrictions as strict as those of Haiti. Under the Haitian Constitution, children born to parents who were born in Haiti are nationals of Haiti. These first-generation children born in the Dominican Republic to undocumented, native-born Haitian parents thus are not stateless. Nationality questions arise when a next generation also is born in the DR, now to undocumented, non-native born Haitian parents. Such "statelessness" results from Haiti's restrictive nationality laws.

Respect For Fundamental Labor Rights

This section focuses generally on labor rights related to forced labor concerns; specific labor protections for minors are discussed above.

The Dominican Social Security Institute (IDSS) sets workplace safety and health conditions. Both IDSS and Ministry of Labor inspectors are charged with enforcing standards. The Ministry of Labor has 203 active inspectors (over 30% increase since 2006, and 5.7% increase from 2007),⁴⁹ all of whom must have a law degree, are hired on the basis of a competitive selection process, do not change with

⁴⁷ See "Haitianas van a maternidad usando cédulas adulteradas," reporting on use of altered Dominican identity cards (in this instance a woman assaulted months earlier) presented by Haitian mothers, but flagged when hospitals prepare birth certificate information. ListinDiaro.com, January 17, 2009.

⁴⁸ http://www.elcaribe.com.do/index.php?option=com_content&view=article&id=203071:haitianas-son-24-pacientes-hospital-&catid=104:nacionales&Itemid=115.

⁴⁹ In 2008, 11 new inspector positions opened to cover 10 interior posts and 1 in the National District.

Administrations, and are required to attend additional training on a continual basis.⁵⁰ In 2008, over 85,000 labor inspections were conducted (almost 60,000 regular inspections and over 25,000 special inspections). In 2007, the total number was almost 80,000, with over 58,000 regular inspections and over 21,000 special inspections. Continuous training exists for those involved in enforcement of labor issues.⁵¹ The Supreme Court and National Judiciary School in 2005 approved a five-year program to improve the training and professional skills of labor prosecutors and other government lawyers involved in labor law administration.⁵² Between February and July 2008, 7 additional courses for judges, agents, Ministry employees and worker and employer organizations, and judicial candidates were held. Moreover, under the “Normativa Laboral” program exchanges between judicial and labor administration positions occurs, creating depth of understanding and consistency in applied criteria. In addition, to inspections and enforcement, the Ministry of Labor also offers a worker-employer conciliation process, whose 37 mediators are located in eight locations.

The GODR has specific initiatives to inform and protect female workers about their labor rights. Most recently in February 2009, the Ministry of Labor released the “Manual de los derechos laborales de las mujeres,” produced as part of *Cumple y Gana* (Comply and Win). It outlines the rights of women in the workplace and how to access the services of the Ministry of Labor when they suspect abuse of those rights. The law prohibits gender discrimination in the workplace.⁵³ Labor Code Articles 232 and 233 prohibit firing employees based on pregnancy.⁵⁴ Dominican Courts enforces these laws. The Supreme

⁵⁰ In April 2008, all Labor Inspectors received a 140% salary increase.

⁵¹ See Verification Report on the Implementation of the White Paper Recommendations, February 2008 – July 2008, p. 84, February 2009 (723 SET participants in 32 training events in the 6-month period, in courses ranging from inspection techniques from a gender perspective to occupational health and safety to international labor standards and application of labor laws).

⁵² See “The Labor Dimension in Central America and the Dominican Republic, Building on Progress,” April 2005.

⁵³ Labor Code Art. 231 (La mujer goza de los mismos derechos y tiene los mismos deberes que el hombre en lo que concierne a las leyes de trabajo, sin más excepciones que las establecidas en el presente título, cuyo propósito es la protección de la maternidad.).

Courtesy Translation: Women enjoy the same rights and have the same responsibilities as men under the labor laws, without exception other than those provided for in this title, whose purpose is maternity protection.

⁵⁴ Art. 232 (Es nulo el desahucio ejercido por el empleador durante el período de la gestación de la trabajadora y hasta tres meses después de la fecha del parto. La trabajadora debe notificar su embarazo al empleador, por cualquier medio fehaciente. La notificación debe indicar la fecha presumible del parto.); Art. 233 (La mujer no puede ser despedida de su empleo por el hecho de estar embarazada. Todo despido por el hecho del embarazo es nulo. Todo despido que se haga de una mujer embarazada o dentro de los seis meses después de la fecha del parto debe ser sometido previamente al Departamento de Trabajo o a la autoridad local que ejerza sus funciones, a fin de que ésta determine si obedece al hecho del embarazo o es consecuencia del parto. El empleador que despidiera a una trabajadora sin observar la formalidad prescrita precedentemente está obligado a pagar a dicha trabajadora además de las prestaciones que le corresponde de acuerdo con este Código, una indemnización equivalente a cinco meses de salario ordinario.).

Courtesy Translation: Discharge by the employer during the period of gestation of a woman until three months after the birth is without effect. The employee must notify the employer of her pregnancy by any reliable means. The notice must indicate the expected date of confinement.); Article 233 (A woman cannot be dismissed from her job for being pregnant. A dismissal because of pregnancy is null. A dismissal of a pregnant woman or within the six months after the date of delivery must be previously submitted to the Department of Labor or the local authority that exercises its functions to determine whether it is because of pregnancy or childbirth. An employer who dismisses a worker without observing the formalities prescribed above is required to pay that worker in addition to the benefits under this Code, a payment equivalent to five months regular salary.).

See also Labor Code Art. 75 (Desahucio es el acto por el cual una de las partes, mediante aviso previo a la otra y sin alegar causa, ejerce el derecho de poner término a un contrato por tiempo indefinido. El desahucio no surte efecto y el contrato por tiempo indefinido se mantiene vigente, si el empleador ejerce su derecho: ...4o. En los casos previstos en los artículos 232 y 392.).

Courtesy Translation: Desahucio is when one party, by notice to the other and without cause, exercises the right to

Court's clearly established line of jurisprudence upholds the law and protects pregnant female employees from improper employment terminations.⁵⁵ These decisions also establish that the protections are of "orden publico," thus also invoke the possibility of civil lawsuits and criminal charges. Labor inspectors are trained to identify gender discrimination. The strong and enforceable legal protection against economic discrimination is bolstered by GODR programs and information (as well as NGO efforts) on combating economic discrimination against women. Programs include Cumple y Gana,⁵⁶ as well as the Labor Ministry's public information campaign that involves media interviews with Ministry officials, written materials, and television and radio spots. The Ministry also, since 2007, has held conferences in conjunction with the private sector on respect for gender protections and legal rights.

Labor concerns often focus on the Dominican – Haiti border. The Haitian border police and any military presence virtually disappeared years ago, leaving border control to the Dominican Republic. Many Haitians enter the Dominican Republic to find work without documentation, on their own or by hiring a smuggler. They often seek work in labor-intensive sectors, such as agriculture, tourism or construction, or in the informal sector. Or they may enter the DR in route to other destinations. Corruption along the border may facilitate undocumented entries. The border has been recognized by many within the DR, within Haiti and outside the island as presenting extreme challenges. In March 2009, Haiti announced it would rejoin the Dominican-Haitian Mixed Bi-national Commission. Haiti's President Preval instructed Haitian officials to work within the Commission to properly discuss mutual matters of interest.⁵⁷

To reduce entry of undocumented workers, the GODR has punished corrupt officials. As noted above and as one example, in January 2007, the court in Monticristi convicted two Dominican defendants, both former soldiers, in complicity in the deaths of several Haitians by accepting bribes to allow the truck carrying the Haitians to cross the border, and imposed sentences of 10 years imprisonment and a fine of 150 minimum salaries. In the past 4 months, it has fired 45 immigration inspectors, referring 7 to legal proceedings, and taken disciplinary actions against others.

The GODR conducts training for migration officials. In coordination with the IOM, the Undersecretary for Consular and Migratory Affairs of the Foreign Ministry is coordinating "Workshop Inspection." The first workshop, held on August 5, 2008, covered detection of false and altered documents, enhancing technical abilities for inspection of travel documents and visas, and detection of imposters. Training for military and DNCD enlisted personnel and officers included instruction on human rights. The Military Institute of Human Rights offers diploma courses in human rights and sends representatives to border units to conduct mandatory human rights training.

As discussed, bateyes historically have been cited as the consequence of poor labor conditions. However, as the sugar industry has changed so have the bateyes. Privatization basically removed the government from the industry, though the government still owns former sugar-producing land. Today the sugar industry only employees about 11,000 workers in total, as mechanization has reduced the number of

terminate a contract of indefinite duration. It has no effect and the contract remains in force indefinitely, if the employer exercises its right: ... 4th. In cases under Articles 232 and 392.

⁵⁵ Casación 360-2006-0083 (August 20, 2008), ordering back wages and costs; Casación 0003-2002-002231 (August 13, 2008), ordering back pay.

⁵⁶ Program began in DR private sector, has been supported by the USDOL, and now spread to other countries. The GODR not only recognizes the program, but supports its objectives and work. *See e.g.*, www.lanaciondominicana.com/ver_noticia.php?sesion_periodico=24&id_noticia=2391; www.funpadem.org/pdf/cyg_english_version.pdf; *See also* www.ustr.gov/assets/Trade_Agreements/Regional/CAFTA/Briefing_Book/asset_upload_file739_13204.pdf.

⁵⁷ Commission was originally proposed in 1995 under President Joaquin Balaguer, officially created during the first Fernandez administration in 1996, but only functioned until 1998.

workers needed to plant and harvest cane. The industry has taken steps to address labor concerns. For example, one private sugar company in the San Pedro de Macorís region voluntarily and satisfactorily submitted to a labor audit to independently determine its adherence to and fulfillment of the current requirements of the Labor Code.

Other bateyes have closed (e.g., Villa Altagracia and Los Bajos de Haina), or have consolidated (e.g., Montellano in Puerto Plata and Esperanza in Valverde Mao). Others have become municipalities (e.g., Consuelo, Quisqueya, Santa Fe and Gautier in San Pedro de Macorís, Güaimate in La Romana, Boca Chica, Guerra, San Luis, Villa Mella, Pedro Brand and Los Alcarrizos in the Sto. Domingo metropolitan area), or have been subsumed by urban areas (e.g., Bayona). On some bateyes, former employees as well as new arrivals remain on the property often working in service, agricultural or informal sectors in nearby towns or are unemployed.

Bateyes improvements are being made the properties as well as continued provision of many basic services to these communities. The 2008 Human Rights report observes: “private sector enterprises in the sugar sector continued to make improvements at their facilities that began in 2007, including new schools and both new and renovated housing. In Nuevo Cayacoa the construction of a fully modern housing and community development was well underway.”⁵⁸ Central Romana has built 6,000 houses, of which 1,000 were given to Haitian employees and Dominicans of Haitian descent. In 2008 alone, it provided medical services to over 25,000 who reside on two bateyes along with three mobile medical units and a mobile unit that provides dental care to children, has dedicated 1,200 hectares for crops and provides other foodstuffs at below market prices, and has built and maintains 57 schools for the children of its workers benefiting over 8,000 children. Grupo Vicini is consolidating several of its bateyes into three, larger new communities that will offer basic services, infrastructure and public services (e.g., potable water, electricity, housing, health clinics, and transport) at an initial cost of US\$ 10 million. Investment in the first community for 132 Haitian and Dominican families is more than US\$ 6.3 million. It also is working with NGOs to offer programs on the bateyes such as Espacios para Crecer and preschool programs that provide opportunities to children and options for their parents. It has over 3,000 students enrolled in a network of 18 school centers that cover preschool to high school. It has 14 medical centers and enrolls its employees with ARS Universal coverage, regardless of nationality. Each of the bateyes near Consorcio Azucarero Central, which operates leased CEA property and not bateye properties, belong to a municipality. CAC provides transportation to worksites, medical services and the only ambulance in the area (which non-CAC employees may use), and shared kitchens for cooking, among other services. The former government sugar properties also have received assistance through agreements with NGOs and GODR agencies, and with support of entities such as the Fondo Patriomonal de la Empresa Reformada (FONPER) and CEA (government corporation responsible for properties). These span the range of services, including creation of agricultural and fisheries entities, development of education and technical training programs (e.g., NGO “Alas de Igualdad), improvements to basic services (potable water, electricity, sanitation, garbage collection, medical services (directly and through an agreement with the Español Hospiten group), nutrition (e.g., “Comer es Primero”), and sanitary measures.

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⁵⁸ 2008 Human Rights Report: Dominican Republic, February 25, 2009.

TAB A: Illustrative List of Investigations and Prosecutions under Law 137-03

Under Law 137-03, there are at least twenty-three ongoing investigations for Illegal Smuggling of Migrants and four for Trafficking in Persons, in one of which a minor is involved. One of the Trafficking in Persons cases is a joint investigation with Swiss authorities of German nationals, one of whom already has been arrested. More than 30 persons currently are detained under Law 137-03.

The Attorney General refers completed investigations to the judicial system. Under Dominican law, at the completion of the investigations, the accused is sent before a Magistrate Judge with the purpose of imposing an order of custody.

The Department Against Illegal Trafficking of Migrants or Persons of the Attorney's General Office, since its creation, has obtained the following convictions:

For Illegal Smuggling of Migrants

- i) Sentence No. 166-2005, July 6, 2005, the Second Receiver's Court of the Chamber of the Criminal Court of First Instance of Santo Domingo, sentenced the accused Nelson Osiris Del Rosario Jimenez to 10 years imprisonment, as he was found guilty of violating the Article 2, of Law 137-03.
- ii) Sentence No. 134-5, August 15, 2005, the Criminal Court of First Instance of the Judicial District of La Altagracia, PEDRO DE LA CRUZ sentenced the accused to 10 years imprisonment, upon finding him guilty of violating Article 2 paragraph 1 and 5 of Law 137-03.
- iii) Sentence No. 128-2005, August 12, 2005, the Second Chamber of the Criminal Court of First Instance of the National District, sentenced Salvador Feliz Cuevas to 4 years imprisonment, upon finding him guilty of violating Articles 2 and 5 of Law 137-03.
- iv) Sentence No. 138-05-2005, September 8, 2005, the First Chamber of the Criminal Court of the Court of First Instance of the National District, sentenced Minerva Libertad Sosa Fernandez to 4 years imprisonment, upon finding her guilty of violating Articles 2, 6 and 7 paragraphs C and H of Law 137-03.
- v) Sentence No. 12-2005, December 19, 2005, the Trial Court Panel of the Criminal Court at the Court of First Instance of the National District, sentenced Braulio Ortiz Pineda to 10 years imprisonment, upon finding him guilty of violating Articles 2, 5, 6 and 7 paragraph H of Law 137-03.
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- vii) Sentence No. 1569, July 18, 2006, the Criminal Court of the Court of Appeal of the Judicial Department of San Cristobal, confirmed the sentencing of Rafael Armando Nivar Diaz to 10 years imprisonment, upon finding him guilty of violating Article 2 of Law 137-03 (to Europe).
- viii) Sentence No. 1049-2006, December 4, 2006, the First Trial Court Panel of the First Instance of the Judicial Department of San Cristobal, sentenced Belkis Amarilis Lopez Rodriguez (a) Amerfis to 5 years imprisonment, upon finding her guilty of violating Article 2 of Law 137-03 (to Europe).
- ix) Sentence No. 03-2007, January 15, 2007, the Trial Court Panel of the Court of the First Instance of the Judicial Department of Montecristi, sentenced Elvis Rafael Rodriguez Ortiz and ESTEBAN MARTINEZ ROSARIO to 20 years imprisonment upon finding them guilty of violating Articles 2 and 7 paragraphs a),

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xiii) October 22, 2008, the Trial Court Panel of the Court of the First Instance of the Judicial Department of Montecristi sentenced to 15 years imprisonment Mariolis Julian Fortuna Peña upon finding him guilty of violating Articles 1 subsection f), 7 subsections a), d), and f) of Law 137-03 (Haiti to DR).

xiv) October 22, 2008, the Trial Court Panel of the Court of the First Instance of the Judicial Department of Montecristi sentenced to 10 years imprisonment Benito Antonio Reyes upon finding him guilty of violating Articles 1 subsection f), 7 subsections a), d), and f) of Law 137-03 (Haiti to DR).

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Discussion Paper:

Trafficking in Persons, the Dominican Republic, and the Government's Anti-Trafficking Commitment and Efforts

The Dominican Republic continues to manifest anti-trafficking commitments, both from the Dominican Republic to other destinations and into the Dominican Republic. The government of the Dominican Republic (GODR) recognizes that the country is a source, transit, and destination for trafficking in persons, as well as for smuggling and undocumented migration.

The DR's efforts to combat trafficking include its causes, challenges and solutions, and are reflected in its laws, official actions and policies, public statements, and international commitments. In fact, the Congress recently approved reforms that give protection of minors and anti-trafficking constitutional stature by prohibiting "slavery, servitude, and human trafficking" in all forms (Article 32) and reiterating the government's obligation to protect minors against sexual abuse and sexual, commercial, labor or economic exploitation (Article 45). The DR's comprehensive anti-trafficking law, Law 137-03, encompasses the elements of prosecution, protection, and prevention. Other laws, regulations, decrees, and initiatives further strengthen the DR's anti-trafficking tools and continue to mainstream anti-trafficking efforts into broader policies and plans.

The National Commission Against Trafficking in Persons (CITIM), created by President Fernandez in late 2007, is fulfilling its charge to develop and coordinate the national strategy to combat trafficking, collaborate in international activities, and propose appropriate legislative initiatives. It is in the final vetting of the National Action Plan Against Trafficking in Persons and Illegal Trafficking in Migrants (2009-2014), an ambitious roadmap, concrete actions, and benchmarks for strengthening efforts to combat trafficking. The First Lady, Margarita Cendeno de Fernandez, frequently and publicly addresses issues of smuggling and human trafficking, most recently during the Crossroads Conference: Private-Public Partnership to Fight Human Trafficking that took place in Manama, Bahrain in March 2009. At that conference, she introduced "National Strategies for Combating Human Trafficking."¹ Government Ministries regularly coordinate and interact with each other on these issues (e.g., Ministries of Trade and of Labor joined forces to strengthen labor institutions and enhance the implementation and enforcement of labor standards) as well as with the NGO communities and private sector.

The GODR is a signatory to relevant international anti-trafficking agreements. In February 2008, it ratified, without reservations, the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. In December 2007, it signed, without reservations, the UN Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing that UN Convention. It has ratified key International Labor Organization (ILO) Conventions.² The GODR actively participates in regional and multilateral efforts, such as DR-CAFTA's efforts to improve and better enforce of labor laws and regulations.

More directly, the GODR is taking concrete actions that demonstrate its commitment to addressing the "three Ps" of anti-trafficking: prosecution, investigation and punishment of offenders; protection and

¹ New educational model that draws on 58 Community Technology Centers (CTC) and the volunteer network of the Progreso program. The CTC program provides internet and communication training to more than 100,000 families living in poverty, enabling greater access to information, awareness on trafficking issues, and updates on trafficking cases.

² E.g., Convention 29-Forced or Compulsory Labor; 87-Freedom of Association and Protection of the Right to Organise; 98-Right to Organize and Collective Bargaining; 100-Equal Remuneration; 105-Abolition of Forced Labor; 11-Discrimination; 138-Minimum Age for Admission to Employment; and 182-Worst Forms of Child Labor.

This material is distributed by Manatt, Phelps & Phillips on behalf of the Government of the Dominican Republic. Additional information is available at the Department of Justice, Washington, D.C.

assistance to victims; and prevention. This Discussion Paper focuses on key efforts that illustrate the commitment and progress of the Dominican Republic, as well as the continuing challenges it faces, in its efforts to combat international trafficking in persons.³ It highlights new and ongoing efforts, but does not touch upon every law or reform.

Underlying these efforts are some unique factors; most relevant is the shared land border with Haiti, a country with a recent history of political and social strife, a dearth of economic opportunities, violence, and insecurity. When addressing trafficking in persons for purposes of sexual or labor exploitation, all countries encounter certain similar challenges. Often, developing economies face additional challenges. But the issue of trafficking and the Dominican Republic cannot be evaluated isolated from the context arising from that shared border.

Shared Border with Haiti – Magnifying Differences Between Countries and Recognizing Differences Between Trafficking and Smuggling

Differences Between Haiti and the Dominican Republic

Trafficking must be viewed in the context of the countries from which trafficking victims come and to which they go. Haiti is often portrayed as the “victim” of trafficking into the Dominican Republic. The Dominican Republic has significant poverty,⁴ but Haiti faces even more difficult conditions. Haiti has been embroiled in economic, social, security, political, and environmental crises for decades. These internal crises as well as some institutional constraints (e.g., absence of strong government institutions, an army, and well-trained and equipped national police) have limited its ability to effectively participate in border control.⁵ Haiti’s situation is perhaps best described by UN Security Council Resolution 1542 (2004) that explains the basis for a Stabilization Mission in Haiti: the “existence of challenges to the political, social and economic stability of Haiti and determining that the situation in Haiti continues to constitute a threat to international peace and security in the region.” The USG has recognized that the Government of Haiti (GOH) has done little in efforts to address trafficking.⁶ It has stated that the GOH needs to implement a comprehensive plan to define and criminalize all forms of human trafficking; to strengthen and train its police force to identify and assist victims of trafficking; and to form alliances and partnerships with civil society, NGOs and other grassroots organizations to deliver services and leverage resources to restaveks and other victims of trafficking. Although the GOH has signed important protocols relating to trafficking, it has failed to fully implement them.

Not surprisingly, facing poverty, insecurity, and a lack of rudimentary basic services and employment many Haitians enter the Dominican Republic over the land border. Most sources estimate the number of Haitians residing in the Dominican Republic to be between 800,000 and 1,000,000, or up to 11% of the DR’s total population. Of course, pinpointing the number of undocumented persons is not possible.

³ Trafficking in persons may be part of broader challenges that governments also are attempting to address. The U.S. Human Rights Report, the U.S. International Narcotics Strategy Report, the U.S. Department of Labor’s Findings on the Worst Forms of Child Labor, or various UN reports, for example, all discuss aspects of trafficking in persons, each with a different focus and context. Information about those specific issues in any way except indirectly is beyond the scope of this focused paper on trafficking in persons.

⁴ In 2004, over 54% of the Dominican population lived in poverty. Economic Commission for Latin America (CEPAL): Social Panorama of Latin America, 2006. The latest UNDP Human Development Report says that 45% of the Dominican population, or 4,486 thousand Dominicans, are poor. Of these, 1,064 thousand suffer from extreme poverty. Poverty was a peak of significant growth during the financial crisis of the national bank in 2003 and began to decline gradually from 43.1% in 2004 to 36.3% in 2006, according to World Bank figures.

⁵ The 1939 Treat of Washington requires both countries to actively participate in border management, but in practice the responsibility falls upon the DR.

⁶ See e.g., Department of State Trafficking in Persons Report, Special Cases, Haiti (June 2008).

Haiti's need to focus on other fundamental challenges, and various organizations' inability to address Haiti's internal situation and its relationship to trafficking, also contribute to the inability to track the exodus from Haiti – be it voluntary, smuggled, or trafficked.⁷

Like many countries, Haiti also is a source, transit and destination country for men, women and children trafficked for the purposes of commercial sexual exploitation and forced labor.⁸ As a destination country, the U.S. government has reported the trafficking of Dominican women into Haitian brothels serving UN peacekeepers. Haiti's domestic drivers of trafficking, however, may be unique. Internal trafficking of children, or *restaveks*, is a significant issue in Haiti. Various studies have explained that much of the trafficking stems from poor rural families giving custody of their children to affluent families, in the hope of better education and economic opportunities. When that occurs across the border, it often may involve Haitian families or relatives in both countries. Children trafficked under such circumstances may give rise to subsequent allegations of sexual exploitation, physical abuse, or involuntary domestic service.

Various proposals to better understand the magnitude of the undocumented population in the DR have been discussed, but often face roadblocks because identifying those individuals may lead to their expulsion or may be seen to legitimize a status that is not legal. In the current process of providing a secure, digitized credential (*cedula*) to Dominicans, the Junta Central Electoral (JCE), an autonomous government agency, has uncovered many situations of undocumented (or fraudulent) credentials of persons of a variety of nationalities.

Differences Among Trafficking, Smuggling and Undocumented Status

The context of Haiti also highlights essential legal distinctions between trafficking and smuggling, and between documented and undocumented status.⁹

Various definitions of trafficking exist. The USG defines it as: (a) sex trafficking, in which a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such act is not yet 18 years of age; or (b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. The common element is “force, fraud or coercion” (except for minors and commercial sexual exploitation) into a situation of unlawful exploitation.

“Smuggling” of migrants, while also not legal, generally involves the procurement, “to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a country of which the person is not a national or a permanent resident.”¹⁰ By definition, migrants cooperate with their smugglers, even seeking them out and paying them. Of course, “smuggling” may become “trafficking” if the elements of force, fraud, or coercion later arise, but only then.

⁷ For example, the 2008 Haiti Human Rights report as released in February 2009 stated: “Several NGOs reported a sharp increase during the year of child trafficking for sexual and labor purposes, especially to the Dominican Republic and the Bahamas. UNICEF estimated that approximately 30,000 children were trafficked into the Dominican Republic.” UNICEF’s web site estimates 2,000 children a year. Subsequent to the public release of the 2008 annual report, and after inquiries by the GODR regarding the cited source report, the Haiti report now posted on the State Department website states: “Several NGOs reported a sharp increase during the year of child trafficking for sexual and labor purposes, especially to the Dominican Republic and the Bahamas.”

⁸ Reports also document that Dominican Republic women are trafficked for commercial sexual exploitation to other countries (discussed *infra*).

⁹ In the DR, both concepts are included under the same Law 137-30, though each has different elements.

¹⁰ See e.g., UN Protocol Against the Smuggling of Migrants By Land, Sea And Air, Supplementing The United Nations Convention Against Transnational Organized Crime (2000).

Finally, the individual who seeks out the smuggler and pays to be brought into another country will be residing in an undocumented status. That condition also may not be legal, but is distinct from trafficking or smuggling. Most undocumented persons in the DR have chosen to leave their country of nationality to reside and/or work in the DR without legal entry documents or other authorization, though persons who are trafficked would also be undocumented.¹¹ Some of those have chosen domestic service, prostitution, or other work that may be associated with situations in which trafficked individuals also are involved. And such undocumented residents in the DR may encounter legal, political, economic and social challenges common to undocumented populations around the world.¹² However, they are free to leave the country.

And of course, not all border crossings are illegal or improper. As in most countries, daily interactions between communities for commercial or personal relationships represent the vast majority of border crossings.¹³ Many Haitians routinely cross the border without (or with) legal authorization, not intending to reside in the DR.

Defining the Magnitude of "Trafficking"

Trafficking estimates and extrapolations vary widely. A verifiable and absolute number for trafficking situations or victims is virtually impossible, as is true for many illegal activities.¹⁴ A number does not

¹¹ See e.g., Santo Domingo: UNICEF: Trafficking of Boys, Girls and Young People from Haiti to the Dominican Republic (2004) (most of the children and young people interviewed were illegal immigrants who had not been trafficked and the main motivation for migrating was a decision by a parent to reunite the family in the DR or because they made arrangements with someone who would take them out of Haiti". www.unicef.org/republicadominicana/english/protection_12467.

¹² See e.g., "Arizona Law Takes a Toll on Nonresident Students," New York Times, January 27, 2008 ("A lot of people I've grown up with have gone through that whole thing. They're raised in the American educational system, and now they have no future. These are people who have basically lived in America their whole lives, know nothing else, and now their shot at the American dream is gone.").

¹³ For example, on Mondays and Fridays alone some 15,000 Haitians cross the border at Dajabón for market days. www.elnuevodiario.com.do/app/article.aspx?id=150889.

¹⁴ For example, while not minimizing the importance of allegations about Haitian children trafficked into the DR, the problem is complex given the motivations for and parties involved. PADF Deputy Executive Director Coughenour observes that extremely poor Haitian parents often give up their children thinking that they will have a better life in another family's home. "Unfortunately, sometimes unscrupulous adults force children to work, become prostitutes or get involved in gangs...Some kids may end up in other countries." See "Congress Told of Exploitation, Trafficking of Impoverished Haitian Children," news.yahoo.com/s/usnw/20090519. In "Needed But Unwanted, Haitian immigrants and their descendants in the Dominican Republic," CIIR, 2004, pg. 62, the authors report: "Haitian children begging on street corners in Santo Domingo and other major cities such as Santiago, and the smuggling of Haitian minors into the county, has been a new cause for concern. A 2002 study revealed that these minors are smuggled in by organised networks, with the complicity of military personnel on the frontier...Over 2,000 young people come across the northern border annually in this way. Normally this takes place with the knowledge and consent of the children's parents, who pay the smugglers – often people known or recommended to them. The parents say that the children are cared for in the Dominican Republic by relatives or people they know and trust. They also point out that in poor households it is normal for the children to work during the long school vacation. However, almost all the youngsters concerned are involved in exploitative work, in the rural areas, in the informal sector or, in the worst cases, in gangs as beggars." Similarly, allegations have been made of Dominican families "adopting" Haitian children, but then treating them as servants. A 2004 fieldwork-based study uncovered no evidence that children are kept in Dominican homes as slaves, evidence of trafficking such children, or involvement by ethnically Dominican brokers or traffickers in intra-Haitian arrangements. Placement of young Haitians in Dominican homes is more likely in the poorer, border region and reflect the greater sense of familiarity between Dominicans and Haitians, be a response to fewer Dominican women willing to work as domestics, and/or reflect a conscious choice by Haitian parents seeking better economic conditions and decreased vulnerability to sexual abuse for their children.

become a valid statistic through repetition alone. Similarly, a failure to regularly reassess underlying conditions creates an improper baseline for evaluation of changes or lack of changes.

Estimates may be over-inclusive. An assumption (explicit or implicit) that undocumented migration is an indicator of “trafficking” will distort estimates, particularly when economic, political, security or other factors in the source country drive the majority of undocumented migration. Moreover, some persons become involved with work that may be associated with trafficking situations voluntarily – at least initially.

Motivations or perceptions about trafficking volumes may confirm expectations of certain populations, but also will distort estimates. A NGO that relies on donor contributions may estimate on the high end of a range of the problem, and on the low end responses, efforts, and protections. Donors might not question estimates that reaffirm pre-existing beliefs that motivate their support. Entities that obtain external government funding might estimate numbers on the high end to ensure continuation of or additions to program funding. When such perceptions form the baseline for analysis of statistics on prosecutions, numbers of victims, and similar indicia of the trafficking situation, responses will always be deemed insufficient, unsatisfactory, or “underreporting” the problem.

Extrapolation as the basis of estimates is inherently imprecise. Basic definitions of the crime differ, sociological factors inhibit data collection, and other legal and structural factors may impede reporting. A common source of information is various NGOs active in the DR and Latin America. However, their work often involves identifying a population subset within a country, and to extrapolate of their subset statistics to the country would be improper.

Of course trafficking occurs, and estimates will be produced. But “estimates” need to be recognized as such and not absolute, verifiable statistics. They must be continually re-examined to reflect the current situation and conditions. They cannot be assumed to remain static, then repeated to support past conclusions.

The Government of the Dominican Republic’s Efforts to Combat Trafficking

The GODR has been undertaking comprehensive efforts to address trafficking of persons, from the Dominican Republic to other destinations and into the Dominican Republic. An essential element of the efforts is the strong legal framework that provides for enforcement and punishment for trafficking of persons, and cooperation within the GODR and coordination between the GODR and others in providing assistance to victims and in prevention efforts.

Anti-Trafficking Framework

The Dominican Republic targets traffickers with criminal, financial, and other punishments. Under Law 137-03, the Law Against Trafficking in Persons and Migrants, the DR broadly defines and prohibits all forms of trafficking,¹⁵ punishes trafficking with significant criminal penalties, and enhances sanctions for

¹⁵ Artículo 1)a): Trata de Personas: La captación, el transporte, el traslado, la acogida o la recepción de personas, recurriendo a la amenaza, a la fuerza, a la coacción, al rapto, al fraude, al engaño, al abuso de poder, o situaciones de vulnerabilidad o a la concesión o recepción de pagos o beneficios para obtener el consentimiento de una persona que tenga autoridad sobre otra, con fines de explotación, para que ejerza cualquier forma de explotación sexual, pornografía, servidumbre por deudas, trabajos o servicios forzados, matrimonio servil, adopción irregular, esclavitud y/o prácticas análogas a ésta, o a la extracción de órganos.

Courtesy Translation: Trafficking: The recruitment, transportation, transfer, harboring or receipt of persons, by threat, force, coercion, abduction, fraud, deception, abuse of power, or situations of vulnerability or giving or

various aggravating circumstances. Penalties include up to 20 years' imprisonment and fines of up to 175 times the monthly minimum wage for trafficking. Enhanced penalties are authorized: when the victim is a child; when a victim suffers physical or mental injury, psychological disability, mental illness, or serious harm as a result; or when a perpetrator takes advantage of a vulnerable victim, is an organized group, or is a public person. Law 137-03 also provides criminal liability for organizations and corporations involved in trafficking of persons, authorizing fines, revocation of a business license, closure of a business, and prohibition of any activities by a legal entity. In addition to trafficking, Law 137-03 includes the separate and distinct crime of smuggling, a comprehensive approach uncommon in anti-trafficking laws. Other laws and legal authorities specific to frequent manifestations of, and activities related to, trafficking and that provide additional legal tools include:

- Law 53-07 (Technology Crime Law) (2007), criminalizing the electronic distribution of child pornography, and prescribing penalties of 2 to 4 years imprisonment for the purchase or possession of child pornography
- Constitution, Principle II, prohibiting forced labor
- Code of Minors, Articles 410 and 411, criminalizing child prostitution and pornography, prescribing penalties for sexual abuse of children of 20 to 30 years imprisonment and fines from 100 to 150 times the minimum wage
- Criminal Code Article 334, prohibiting procurement for prostitution, keeping or hiring a person for prostitution, receiving benefits from prostitution, and acting as an intermediary between persons engaged in prostitution

Law 137-03 also requires information sharing between government and non-government organizations.¹⁶ The GODR has established various task forces that include representatives of the Ministry of Women; the Ministry of Foreign Affairs; the Office of the Attorney General through the Department for Combating Trafficking in Women, Boys, Girls and Adolescents; the Department of Immigration; the Interdepartmental Committee for Protecting Migrant Women (CIPROM); and other organizations. An ancillary benefit of these Commissions is regular interactions among government and non-government organizations working on these issues.

On October 8, 2007, the GODR issued Decree 575-07, which established a National Commission Against Trafficking in Persons (CITIM). CITIM's mission is to provide an integrated vision implemented through a national plan to control trafficking, consistent with the Dominican Republic's national and international commitments. It is comprised of 14 government entities involved with trafficking issues, each with voice and vote.¹⁷ It integrates international organizations, such as the International Organization for Migration (IOM), and NGOs.¹⁸

receiving of payments or benefits to obtain the consent of a person having control over another, with the purpose of exploitation, to exercise any form of sexual exploitation, pornography, debt bondage, forced labor or services, servile marriage, irregular adoption, slavery and/or similar practices, or the removal of organs.
Artículo 1)f): Tráfico ilícito de migrantes: La facilitación de la entrada, salida, tránsito o paso ilegal de una persona en el país o al extranjero, sin el cumplimiento de los requisitos legales, con el fin de obtener, directa o indirectamente, un beneficio financiero u otro beneficio.

Courtesy Translation: Smuggling of migrants: The facilitation of entry, exit, transit or illegal passage of a person in the country or abroad, without complying with the legal requirements, with the purpose to obtain, directly or indirectly, a financial benefit or other benefit.

¹⁶ See, e.g., Articles 12, 15.

¹⁷ Secretary of Foreign Relations; Secretary of Interior and Police; Secretary of Education; Secretary of Labor; Secretary of Tourism; Secretary of Public Health & Social Assistance; Secretary of Women; Attorney General; National Police; Migration Directorate; Tourism Police; Navy; National Children's Council; and Office of First Lady.

¹⁸ Its functions include: (a) to develop a National Action Plan to Combat Trafficking in Persons, which establishes priority areas to direct efforts to combat, prevent, protect and provide attention to trafficking victims in the

The CITIM now is internally validating the Plan Nacional de Accion Contra La Trata de Personas y el Trafico Ilicito de Migrantes (2009-2014) (National Action Plan Against Trafficking in Persons and Illegal Trafficking in Migrants (2009-2014)) (“National Action Plan”).¹⁹ The National Action Plan reflects the input of government agencies, NGOs, civil societies, and international organizations, with the support of the IOM that participated in six initial workshops. The CITIM also relied on information from the United Nations, the IOM, and the Global Alliance Against Trafficking in Women (GAATW), among others. The National Action Plan’s three strategic components to combat trafficking mirror the “3 Ps” of Law 137-03: prevention; prosecution; and protection of victims and witnesses. For each component, it identifies strategic alliances, activities, timeframes, indicators, responsibilities, budgetary allocations, and monitoring, public reporting and evaluation mechanisms.

Significant Achievements in the “Three Ps:” Prosecution, Protection, Prevention

Investigation and Prosecution of Traffickers

Using the robust framework based on Law 137-03, the Law on Illegal Smuggling of Migrants and Trafficking of Persons, and other legal tools, the GODR continues to investigate and prosecute trafficking of persons and related offenses. The Attorney General’s office reports at least 27 active investigations under Law 137-03.²⁰ Completed cases supporting prosecution will be referred to the judicial system.

The GODR’s investigative agencies work with other countries’ law enforcement officials. For example, they are working with Swiss authorities on a joint trafficking investigation involving German nationals; one person has been arrested so far.

Various reports have recognized that in the DR trafficking organizations were typically small groups. Investigative agencies also reach out to and work with other organizations to gather tips and formal accusations, such as the Llama y Vive hotline launched in the DR in 2007.²¹

Examples of recent successful prosecutions under Law 137-03 include:²²

Dominican Republic; (b) to integrate and coordinate efforts related to the investigation, prevention and assistance of these crimes with national and international organizations; (c) to develop training and education programs that cover the variety of manifestations of trafficking; (d) to publicize these efforts among the population; (e) to propose necessary and recommended legislative initiatives; (f) to recommend projects and actions to appropriate government entities; and (g) to collaborate in international reports about trafficking in persons.

¹⁹ After internal verification in April 2009, it will be presented for external verification to the National Congress and other GODR institutions, additional NGOs, international organizations, and labor and diplomatic personnel of destination countries.

²⁰ Tab A: Illustrative List of Current Investigations.

²¹ Llama y Vive is in 6 countries in Latin America & the Caribbean and, in April 2008, the Washington DC metro area. It only launches in countries that already have all the elements to provide victims’ assistance. Free confidential 24/7 hotlines are staffed by a team of trained NGO professionals who channel questions and cases to assistance and law enforcement organizations, as appropriate. Specialized NGOs and experts distribute materials and information to target populations in high risk areas lead local awareness. Media outlets disseminate news and other hotline promotion materials; radio, print, TV and AV materials feature Ricky Martin. See llamayvive.org.

²² In the Paya case, mentioned elsewhere, one charge against defendant Jose Sime Cisneros is under Law 137-03, Art. 2, for attempting to smuggle Edward Mayobanex Rodrigues Montero, former Navy captain and one of the prime defendants, out of the DR.

- December 2008: A judge in Bani sentenced Orin Clinton Gomez to one year in preventive custody on charges of suspected violation of Law 137-03, involving his efforts in bringing three of seven Colombians who were murdered in Paya, by boat to Bani and then taking the cash for the smuggled drugs.
- October 22, 2008: The Trial Court Panel of the Court of the First Instance of the Judicial Department of Montecristi sentenced Mariolis Julian Fortuna Peña to 15 years imprisonment for violating Articles 1 subsection f), 7 subsections a), d), and f) of Law 137-03.
- October 22, 2008: The Trial Court Panel of the Court of the First Instance of the Judicial Department of Montecristi sentenced Benito Antonio Reyes to 10 years imprisonment for violating Articles 1 subsection f), 7 subsections a), d), and f) of Law 137-03.
- June 4, 2008: The Trial Court Panel of the Court of the First Instance of the Judicial Department of Montecristi sentenced Eladio Simon Valdez Jimenez to three years imprisonment for violating Articles 1 subsection f) and 2 of Law 137-03.
- March 7, 2008: The Trial Court Panel of the Court on First Instance of the Judicial Department of Montecristi sentenced Pedro Julio Diaz Molina to three years imprisonment for violating Articles 1 subsection f) and 2 of Law 137-03.
- A court in Altagracia has issued an arrest warrant for Yeyto Toledo for trafficking of minors to Istanbul.
- August 2007: The National District prosecutor charged a foreign national with trafficking in persons and deported two other foreigners for forcing 14 Haitian women in Santo Domingo to perform before a video camera lewd and sexual acts that were later uploaded and sold via an Internet pornography site.
- January 2007: The Montecristi court convicted Dominican organizers of an illegal trip, during which several Haitians died, under Law 137-03 and other criminal statutes, imposing the maximum sanction of 20 years in Reclusión Mayor and a fine of 250 minimum salaries on two defendants under Law 137-03 and homicide laws, and 10 years imprisonment and a fine of 150 minimum salaries on two other defendants.

In addition to prosecutions under Law 137-03, other criminal laws may provide the legal basis for prosecution for related activities. Many more “complaints” or possible trafficking cases are reported than are prosecuted. This reflects the growing awareness of various GODR officials to potential trafficking situations. As Law 137-03 is a criminal law, its burdens of proof are very high. Thus, referred cases may actually result in prosecutions under other laws. The Attorney General reports that these options for criminal prosecutions also may be preferable when a risk of re-victimization exists, for example:

- April 2008: A National Police Technology Crimes Department investigation led to the detention of two men, one a minor, for violating Law 53-07 (cyber crimes) after they published doctored nude photographs of the daughters of local officials and other lewd photographs on an Internet site.
- 70 cases of fraud by persons promising visas usually around Embassies (e.g., U.S., Italy, Mexico); in these cases, 22 defendants were put on probation, 2 were imprisoned for 6 months, 8 were imprisoned for 3 months, and 26 were released on bond.

The GODR undertakes aggressive efforts to root out official complicity with human trafficking, especially among senior level officials. But it has a “Zero Tolerance” policy for any officials.²³ It investigates public officials who allegedly facilitate, condone, or are complicit in trafficking activities or

²³ The National Action Plan recommends regular statistical reports on numbers of detected cases of corruption of public officials with anti-trafficking responsibilities as well as strengthening disincentives to participate in corrupt activities.

migrant smuggling (or related activities), and has brought actions against members of the national police, Navy, prosecutors and officials of local governments for violations of Law 137-03. Over the past three years, the Migration Directorate has fired 400 inspectors for possible involvement in smuggling and trafficking of persons; other agencies have taken similar actions against their officials who abuse their positions. Some examples include:

- Since the beginning of the second Fernandez Administration alone, 45 immigration inspectors have been removed from their positions; 5 of them are in the legal system and 2 already are under preventative detention; numerous other officials have been suspended or disciplined.
- At least 10 officials of the Navy remain in prison in connection with the Orin Clinton Gomez case involving suspected smuggling of Colombians murdered in Paya.
- December 8, 2008: Rafael Guillermo Guzmán Fermín, head of the National Police, were dishonorably discharged, stripped of their uniforms, and led out of the Police headquarters before a full assembly of the troops two members of a police patrol, former sergeant Obispo Montero Ramirez and former corporal Sandro Familia Paniagua, who detained a Haitian national, beat him and stole EUR37,000 and two passports from him; they also are being referred to the justice system to face kidnapping and robbery charges.²⁴
- The National District prosecuting attorney filed charges against Doris Altagracia Vasquez, a high-level official in the Ministry of Labor, for involvement in a trafficking scheme that lured citizens with false offers of employment in Spain and Canada in June 2007.
- The Court of First Instance of the Judicial District of Santo Domingo sentenced the former Mayor of the National Police Rafael Elpidio Fernandez Garcia to five years imprisonment.

Regardless of nationality, the GODR pursues claims that public officials facilitated or were involved in trafficking of persons or migrant smuggling. Cases that the DR has prosecuted or is prosecuting include:

- Renato Bregu, Albanian citizen, for Trafficking in Persons. In May 2007, two victims filed charges against Bregu for violation of Law 137-03 for the organization of illegal trips. Through Resolution No. 613-07-00184, dated May 2007, the Magistrate Judge of the Dajabon Judicial District imposed an order of custody.
- March 2, 2005, the Supreme Court of Justice found Radhames Ramos Garcia guilty of smuggling involving Chinese citizens and sentenced him to one year and six months imprisonment.
- Santo Valdez Cuello, Farcoleni Rivera Santana and joint-parties, were sentenced to 20, five and three years imprisonment, respectively, by the Court of First Instance of the Judicial District of Santo Domingo.

Ambiguous allegations have been repeated of high-level consular and immigration officials directly involved with the smuggling of Chinese nationals to the Dominican Republic. In 2007, the Haitian government investigated allegations that its consulate in Barahona was linked to a network smuggling Chinese nationals. Consulate supervisor Pierre Laud Lagrenade was suspended from his duties, convicted in Haiti on charges of trafficking, and sentenced to 15 months in prison.²⁵

The GODR uses additional means to identify potential trafficking, including in sectors that often are expected to offer greater opportunities for trafficking. Labor inspections are one such tool. The number of inspections continues to increase, and the Ministry of Labor's 203 inspectors are trained to identify potential trafficking situations. The current procedure is to immediately notify the Attorney General's Office when a situation involving suspected trafficking is identified. The Ministry's statistical

²⁴ <http://www2.elnuevodiario.com.do/app/article.aspx?id=131766>.

²⁵ See Tab A: Illustrative List of Investigations and Prosecutions

information gathering continues to improve. Yet in the past three years since trafficking has been a specific category in child labor inspection reports, no instances of trafficked child labor were identified through labor inspections. This result is not unexpected, as child trafficking victims would not be expected to be encountered in regular workplaces.

GODR officials, in addition to those specifically focused on anti-trafficking, are trained to identify potential trafficking situations. Statistics of the number of “anti-trafficking” officials in the DR often does not include these individuals. But given their other official activities, anti-trafficking training is regularly provided across a broad spectrum of agencies. The issue is included in the program and course given by the Technical Migration School for aspiring Migration Control Officials. The General Directorate of Migration regularly instructs new immigration officials in anti-trafficking matters. The GODR is participating in the project “Strengthening of the National and Regional Training for the Prevention and Combating of Trafficking of Persons in Latin America” of the UN Office Against Drugs and Crimes. Under the strategic theme of Rule of Law, the project plans to apply conventions and protocols as well as encourage international cooperation in areas of criminal justice.

Certain sectors more frequently have been alleged to use “trafficked” labor: construction, domestic service, agriculture, and within agriculture, sugar.

In the construction sector, the initial distinction must be drawn between persons trafficked to the DR for work in the sector and those who are in the DR in an undocumented status, having entered either with the help of a smuggler or on their own, and now seek employment.²⁶ Anecdotal evidence indicates most undocumented workers are already in the DR seeking work; the GODR knows of no statistical data to the contrary. When construction employment is available, applicants often are friends or family of other workers. Studies such as one by the Dominican Central Bank provide factual context for the incentives to seek employment in this sector. While actual numbers and earnings of undocumented persons are difficult to determine, the study concluded that the construction sector in total generates about 256,000 jobs, with an average daily salary of RD\$325-350, which by law will be 5% higher than the legally established minimum salary. Labor law makes no distinctions between undocumented and documented workers.²⁷ Dominican law also contemplates issuance of identification carnets of temporary workers in sectors of the country that face a shortage of that type of worker, with some exceptions.²⁸

In domestic service, workers are predominantly female. As in the construction sector, the initial distinction must be drawn between persons trafficked to the DR for work in the sector and those who are in the DR in an undocumented status, having entered either with the help of a smuggler or on their own, and now seek employment.²⁹ Studies have documented the increasing “feminization” of migration, which in the DR is reflected in women in domestic service who entered the country alone.³⁰ They often work in homes replacing Dominican women who have left the country to work in Europe. They may be more likely to have some basic documentation than others who enter the DR. Women who accompany their husbands or other family members who work in other sectors of the economy may seek their own

²⁶ A recent study by the Pew Hispanic Center “*A Portrait of Unauthorized Immigrants in the United States*,” April 14, 2009, found that 14% of unauthorized immigrants in the U.S. are working in the construction sector, the highest of any sector, followed by 13% in agriculture, and 10% in leisure and hospitality.

²⁷ In 1997, the Supreme Court determined that a foreign worker without legal papers has the right to take legal action to make a claim for unpaid wages. A worker who cannot afford an attorney can request legal representation of a lawyer from the Ministry of Labor; documented or undocumented status is not a factor.

²⁸ Law 285-04, Chapter III, Section XI (not in tourism or in most free zones).

²⁹ See FLACSO, “Una cuestión de entendimiento. La presencia de las mujeres migrantes haitianas en el servicio domestico en la República Dominicana,” September 2008 (Haitian female migrants in domestic service in the DR).

³⁰ The FLACSO study describes the feminization of migration. Its interviews disclose a range and combination of motivations: family reunification, looking for work, continue studies, and social-political violence in Haiti.

employment in domestic service. DR laws define work conditions for domestic services.³¹ When workers in this sector are not in a documented status they can face obstacles common to undocumented workers, but may be even less visible because they work alone in a home.

The agricultural sector has been cited as one that uses “trafficked” workers. Again the initial distinction must be drawn between persons trafficked to the DR for work in this sector and persons already in the DR in an undocumented status and now seek employment.³² Failure to respect that distinction also risks diverting efforts designed specifically to address any trafficking in the sector. As noted, labor laws protect both documented and undocumented workers. Labor Courts frequently rule in favor of workers who take legal actions to protect their labor rights. Legal protections and hiring programs for undocumented workers provide additional disincentives to employ “trafficked” workers. As noted, the Migration Law contemplates issuance of identification carnets of temporary workers in the agricultural sector if it faces a shortage of workers, and Migration officials recently have been discussing such carnets for agricultural workers in the northeast region for the season.³³

Allegations have long been repeated that “trafficked” labor continues to be used in the sugar harvests. Such allegations are undermined by practice, industry characteristics, and consistency in analysis. In the first six months of 2008, 11 inspections were conducted in San Pedro de Macorís (8), La Romana (1) and Barahona (2). In 2007, labor inspections were conducted in Independencia (8), San Cristobal (4), La Romana (3), and San Pedro de Macorís (18), and Health and Sanitary Division inspections were conducted in San Pedro de Macorís and La Romana in December 2007. Trafficking conditions were not discovered by the inspectors.

Moreover, the number of workers in this sector continues to decrease with less than 10,000 workers required for the most recently completed harvest. Mechanization of sugar production, the large population already residing in the DR, and cessation of government-owned plantations have reduced the need for workers. Moreover, in 2005 the sugar industry signed written commitments to not use the *contingente* system of contracting laborers, which had presented opportunities for abuse by unscrupulous individuals in the past. Concurrently, the Migration Service communicated that the sugar companies should obtain workers from nearby communities, if additional employees were needed.

Further, many allegations of “trafficked” labor and the sugar communities (“bateyes”) are fundamentally inconsistent. On the one hand, trafficked laborers allegedly are forced to live in bateyes. Yet, bateye residents are free to leave the property. In response, it is explained that people “fear” to leave because of possible deportation. But the USG and others have recognized that the GODR does not penalize trafficking victims. Similarly, while laborers living in the bateyes are reportedly “trafficked”, families live in bateyes and trafficking of families has not been cited. And many of the bateyes have become communities (with some incorporating into municipalities). In others, improvements are being made, such as new schools, health services, and other services. These are indicia of communities, not coerced situations. Finally, no compulsion exists on residents in those bateyes associated with former government sugar operations.

³¹ See e.g., Labor Code Article 258 “Trabajadores domésticos”; Ley 103-99.

³² Nevertheless, Dominican Labor law extends protections to undocumented workers and labor courts frequently rule in favor of workers who take legal actions to protect their rights (e.g., Labor Court of San Pedro of Macorís (east) Judicial District recently ruled for 500 Haitian agricultural braceros who years ago filed a lawsuit against a private sugar consortium seeking formalization of their labor contracts, and rejecting arguments that the braceros lacked identity and electoral cards and that the workers were not regular employees. After an appeal, the trial is now ongoing.

³³ www.hoy.com.do/el-pais/2009/1/28/264443/Carnet-para-trabajadores-agricolas-haitianos.

Important checks on investigation and prosecution of trafficking are provided by NGOs. Many NGOs are active in the DR, and conduct their activities unimpeded. Some focus on monitoring to ensure protection of rights, such as activities under the agreement between CONANI and the Inter-American Children's Institute to monitor enforcement of children's rights that include (among others) commercial sexual exploitation and trafficking.

Consistent with vigorous investigation and prosecution of trafficking, the Dominican Republic provides the appropriate legal protections for trafficking victims. As noted by the U.S. Department of State and others, victims are not jailed or penalized for crimes committed as a result of being trafficked.³⁴ Of course, in any law enforcement action a trafficking victim could be swept up and temporarily detained with other suspects. But, it is not the law, policy, or regular procedures of the GODR to not appropriately treat a trafficking victim as such once identified. The GODR has released some foreign trafficking victims into IOM custody after a brief processing detention, instead of keeping them in jail or immigration detention centers prior to deportation. As one example, in May 2008 the IOM assisted 17 Ecuadorian citizens, who remained under protection for 15 days. Sixteen returned to Ecuador, and one remains in the DR to collaborate with the Attorney General's office in the prosecution of the traffickers. The GODR does not distinguish among the nationalities of trafficking victims, but rather treats all victims equally under the law and in practice.

*Protection and Assistance*³⁵

The GODR has created not only inter-institutional structures to focus on trafficking, but also specialized units within Ministries. These include, for example, within the Attorney General's office the Unit of Investigation, Unit of Commercial Sexual Exploitation via Internet, Unit of Education and Prevention, and National Direction of Attention to Victims; within the General Direction of Migration the Department of Illicit Smuggling of Migrants and Trafficked Persons; and within the Foreign Ministry the Section on Trafficking in Persons and Illicit Smuggling of Migrants.

The GODR continues to strengthen the capacity and abilities of persons involved in providing protection and assistance to victims. This includes law enforcement and judicial personnel as well as Labor Ministry officials who may be conducting inspections. It includes the Ministry of Women, through its Legal and Adoptions Department that monitors adoption processes and imposes documentation requirements to prevent children from being abandoned or taken from their families, situations that could involve trafficking. The National Action Plan identifies other tools to strengthen the ability to provide protection and assistance, such as creating an English and Creole translation service for foreign trafficking victims and a "single window" system in which victims can access a full range of basic assistance, emotional support, and reintegration services.

Although the DR has been criticized for relying on international support and assistance in protecting victims of trafficking once identified, coordination is required by law and, in any event, will most effectively leverage available assets of the GODR, various NGOs, and international organizations to protect victims. The GODR, on its own and through strategic relationships with NGOs and other organizations, has created a network that provides shelter and social services to trafficking victims. It is not ad hoc or uncoordinated, but an effective system that leverages existing missions, expertise, and resources. The network includes temporary shelters, legal assistance, legal protection, medical care and services, and job skills training.

³⁴ Law 137-03 excludes prosecution of a trafficking victim from for crimes s/he may have committed while being trafficked (e.g., illegal entry, prostitution, illegal presence, and unauthorized work) when the victim collaborates with authorities or identification of the person(s) responsible for the trafficking.

³⁵ See generally Law 137-03, articles 9 – 11.

Shelter is provided by the “Red de Religiosas contra la Trata” of the Adoratrices sisters.³⁶ They operate two shelters, one in Haina and one in San Cristobal, and receive some financial support from the GODR through the Office of the First Lady and the Ministry of Women. The GODR along with the IOM has sponsored shelters for at risk youth. The program of Integral Atención provides shelter in temporary homes for persons under age 18 who are in situations of risk or danger (without limiting the reason for the danger). Safe Houses Program also provides assessments and referrals for additional services and follow-up. It currently operates 6 safe houses in Santo Domingo and one in the interior, and plans to open 9 more around the country.

With the support of the Ministry of Women and others, COIN directs El Centro de Acogida para Mujeres Imigrantes Traficadas y Retornadas (Center for Trafficked Immigrants and Returnees). Its mission is to promote empowerment and respect of the human rights of migrant, trafficked, and/or returned women through services including information, medical and psychological attention, and legal and practical support. At no charge to victims, it provides legal advice and follow-up, legal protection when needed (through coordination with the Attorney General’s Office), medical care and laboratory services, counseling and psychological services, and social services and training to develop work skills that help prevent return to exploitative situations as the only option. In addition to publication of education messages, it conducts workshops and discussions. The police and Prosecutor’s Office refer adult victims of trafficking to COIN.³⁷

The potential risk for and nature of trafficking situations is not uniform throughout the national territory. To most effectively protect and assist victims, the GODR has identified and initiated targeted efforts for sectors potentially more susceptible to trafficking. Although no data indicates that most prostitutes are trafficking victims, the GODR’s efforts include protection and assistance to them.³⁸ It will always be true that undocumented persons may encounter more difficulties in receiving assistance. But such difficulties are less likely to be faced by those who left their home countries against their will as victims of human trafficking than those who left their countries on their own volition. Fundamentally, trafficked persons often do not want to remain in the DR.

The GODR is equally concerned with its citizens who are trafficked, either into prostitution or other labor situations, from the DR to other countries. Destinations span the world, and include Western Europe, Australia, Argentina, Brazil, Costa Rica, Panama, Haiti, and other Caribbean destinations. As well as providing services to prevent such trafficking (discussed *infra*), the Ministry of Foreign Affairs has trained individuals posted abroad to identify and assist trafficking victims and has established a network to assist them to return to the DR and to reintegrate. Its Consular Service mandate includes assistance to Dominicans who find themselves in situations of vulnerability and/or victims of trafficking. The Consular Missions facilitate lodging, food, return transportation (in special cases), medical services, and legal support. Food and clothing assistance as well as medical services are covered by the budget of the Consular Office with contributions from government institutions and NGOs. International air transportation is covered by the Foreign Ministry and, in some cases, the IOM through its voluntary return of trafficking victims project. Other victim assistance centers include Network of Families of Migrants Outside the Country (Red de Familias de Migrantes al Exterior) and Centro de Apoyo Aquelarre (CEAPA). The Migration Directorate is creating a database of foreign businesses that seek to hire

³⁶ The Ministry of Women has an emergency shelter and other shelter for victims of violence, but trafficking victims and abused or other at-risk women present issues that make a single shelter for both populations inappropriate.

³⁷ UNDOC, Global Reports on Trafficking in Persons, p. 139, February 2009. The Ministry of Women also reports referrals from the Dirección Nacional de Atención a Víctimas (DNAV), by individuals, and IOM.

³⁸ Support includes, e.g., psychological support and medical assistance, returning children to classrooms, and reuniting children with their families and communities whenever possible.

Dominican laborers, and require them to comply with international and domestic standards, as well as monitoring and follow-up mechanisms to those hired.

The GODR also participates in regional and plurilateral efforts to identify methods to protect and assist victims. For example, in June 2008 a GODR delegation participated in “Strengthening Regional Cooperation for the Reintegration of Trafficking Victims” workshop in Managua, Nicaragua, which identified minimum standards to produce a regional action project on reintegration of trafficking victims.

Protection, however, includes more than protection of victims once trafficking has been identified or suspected. The National Action Plan includes in the concept of “protection” the protection of victims and witnesses in trafficking prosecutions. One of the National Action Plan’s activities is to institute the “protected witness” concept and other protection mechanisms identified in international instruments (e.g., new identity, changing residence, relocation to another country). These protections will provide prosecutors with testimony necessary to prosecute organized crime without risking the life or well-being of those who participate in the prosecution of alleged traffickers.

*Prevention*³⁹

Law 137-03 also mandates the prevention of trafficking. GODR institutions must undertake, with civil society, activities such as public campaigns, and economic and social initiatives to prevent and combat trafficking in persons. They must develop policies, plans, and programs to prevent future risk of victimization, especially for vulnerable groups. Other laws also impose obligations related to “prevention,” such as Labor Code Article 254 that requires employers to ensure minors continue their schooling. Public education and awareness building about the causes and consequences of trafficking forms an essential part of the DR’s efforts to combat trafficking.

The National Action Plan continues such efforts as well as proposes timeframes for prevention outreach and training to a host of public and private sector entities. These include regular workshops for: the Diplomatic Missions of the 10 principle destination countries; media and other communications entities; public and private school personnel; churches, alms societies, youth clubs, and professional associations; business and business associations; the cultural sector; labor unions; migrants of all nationalities; the Dominican diaspora in the 10 principle destination countries; owners and managers of hotels, bars, restaurants, and other such businesses; and health professionals, among others.

GODR officials receive training on trafficking issues to support prevention efforts.⁴⁰ In August 2008, “Workshop Inspection” for migration and passport officials was held on detecting of false and altered documents, enhancing technical abilities for inspection of travel documents and visas, detecting imposters in coordination with the IOM and the Undersecretary for Consular and Migratory Affairs of the Foreign Ministry. Training sessions on Trafficking in Persons are regularly held for new immigration officials. As discussed, the Ministry of Foreign Relations trains consular officials on trafficking in persons issues within the framework of consular networks. The National Action Plan contemplates new cooperation agreements between CITIM and the Ministry of Education and the Ministry of Higher Education, Science and Technology to include trafficking issues in education curricula and with the Armed Forces and the National Police in their training curriculum.

³⁹ See generally Law 137-03, articles 12 – 15.

⁴⁰ The expenses of activities including the training of officials in seminars, conferences, and courses provided on a national level and attendance at international training events are covered by the institutions that form the National Commission Against the Trafficking in Persons. Part of their budgets is assigned by the GODR.

GODR anti-trafficking programs across the country have reached over 5,000 students. The Migration Direction's Alien Smuggling and Trafficking in Persons Prevention Unit, in coordination with Ministries of Labor and Education, offers courses that warn children of the dangers of alien smuggling, commercial sexual exploitation, and trafficking. The Attorney General's Unit of Education and Prevention offers educational, training and prevention courses in various schools in the Santo Domingo area on trafficking in persons, illegal trafficking in migrants, and commercial sexual exploitation. As of February 2008, this program reached 2,130 adolescents, including students at Escuela Liceo Evangélico Central in Villa Juana (200 students), Liceo Estados Unidos de América in Gazcue (600 students), Escuela Socorro Sánchez in Villa Duarte (430 students), Liceo Ramón Emilio Jiménez in Santo Domingo (250 students), Liceo Ramón Matías Mella (300 students), and Politécnico Pilar Constanzo in Villa Duarte (350 students).

The GODR, NGOs, and others have active public information activities on prevention.⁴¹ Some GODR information campaigns about the dangers of and penalties for trafficking are:

- Attorney General La Ley Pega Fuerte ("The Law Hits Hard"), with written fliers and brochures.
- Migration Directorate No Al Comercio Humano ("No to Human Commerce")
- Navy Campaña Contra Los Viajes Ilegales ("Campaign Against Illegal Travel")
- Ministry for Women (supported by Fundación Institucionalidad y Justicia (FINJUS)) Impresión Popular de la Ley 137-03 ("Understanding Law 137-03"), Mujer Conoce Tus Derechos ("Woman Know Your Rights") (radio featuring experts, e.g., psychologists, counselors, educators, lawyers)

COIN also has published various prevention materials: Foreign Travel: Illusions and Lies; Prevention of the Sexual Exploitation of Minors; Center for Refuge for Women Migrants; Foreign Travel: Information for Women Migrants; Triumphs of Maritza; The Advice of Maritza; The Travels of Maritza; Maritza and the Trusted Partner; and, Mario. Already mentioned is the Llama y Vive (Call and Live) hotline that not only provides assistance to trafficking victims, but also raises awareness about human trafficking among potential victims and the general public through media campaigns.

The GODR and various organizations continue to address problems of sex tourism, often of foreign tourists, many from Western Europe (i.e., Spain, Italy, and Germany) though some from Canada and U.S. The efforts focus on high volume tourism areas such as Las Terrenas, Sosua, and Boca Chica. In Boca Chica, a project of The Office of the First Lady has developed 19 workshops that provide vocational training to mothers so that they can provide for their children. Of the over 2,000 participants, more than 50 subsequently have obtained small business loans. The Caminante program in Boca Chica, in turn, serves children who are at risk of being drawn into prostitution as a result of the culture associated with the tourist economy. It provides a safe space for youths and their families to receive counseling and participate in recreational and formation programs. In coordination with local government agencies and NGOs, victims of sexual abuse and exploitation receive special attention and services. Many of the Caminante staff are former participants in the program who lived on the streets or had little support from a family. The program also works closely with the families, churches, and the community to raise awareness on the complexity of this problem. Other NGOs conduct programs about prostitution and child sexual exploitation for hotel and industrial zone workers, male and female prostitutes, and other high-risk groups. The NGO MAIS-ECPAT is active in Bavaro and Puerto Plata – Sousa, working with the tourism industry and conducting workshops for members of the tourism industry.

⁴¹ The National Action Plan continues such efforts, and imposes requirements for updating the information and launching additional / new campaigns.

COIN, with IOM support, administers the Center for Health and Migration Information for Migrant Women (CIMS) to counsel women planning to accept job offers in Europe and the eastern Caribbean about immigration, health, and other problems, including the dangers of trafficking, forced prostitution, and forced domestic service.

Distinctions between efforts to prevent trafficking and labor exploitation probably become most blurred in prevention efforts. Many projects target vulnerable or at-risk children, and do not draw distinctions on why the risk exists. For example, in January 2008 the GODR and U.S. Department of Labor (DOL) announced their support for “Educando para combatir la explotación laboral infantil,” administered by the Dominican NGO EDUCA (Acción para la Educación Básica), to target education services through the existing Espacios para Crecer and vocational and micro business programs to 10,000 children involved in, or at risk of involvement in, the worst forms of child labor, which includes commercial sexual exploitation and other work situations.⁴² In March 2008, INFOTEP (Instituto Nacional de Formación Técnico Profesional) and EDUCA agreed to implement a program to provide technical training to 2,500 young people in vulnerable circumstances, without requiring the vulnerability specifically be for trafficking. The Labor Ministry’s “Action On Child Labor” for bateyes in Barahona, Bahoruco and Independencia is established through Visión Mundial República Dominicana. It focuses on trafficking, health conditions and work accidents, and providing options through school and recreational programs and medical and legal assistance.

The foregoing discussion demonstrates the range and methods through which the GODR, as a government and in coordination and cooperation with others, manifests its commitment to anti-trafficking efforts. Any attempt to “quantify” such efforts by a single figure or the budget of a particular agency as the indicator would be inadequate. Nevertheless, an oft-repeated criticism is that the DR does not allocate 2% of its national budget to CONANI, and 5% of municipal government budgets to projects that “benefit” children (though the definition of what would constitute a “benefit” is unclear). The Department of State 2008 Human Rights report on the Dominican Republic says: “The government declared its commitment to children’s rights and welfare and tried to increase protection for children, with emphasis on eliminating child labor. However, the government did not meet the law’s stipulation that the noncabinet National Council for Children and Adolescents (CONANI) receive at least 2 percent of the national budget and that a minimum of 5 percent of municipal government budgets be devoted to projects to benefit children.”⁴³ Such language and criticism is then repeated in other reports. For example, a 2007 U.S. Department of Labor report states: “CONANI is supposed to receive a minimum of 2 percent of the national budget; however, this is not being met.”

Not only is it simplistic to take one agency’s allocation under the national budget to define a commitment to “children’s rights and welfare,” but it is equally untenable to ignore the broader context. The GODR does not meet this law’s stipulation that CONANI receive at least 2 percent of the national budget, but it is equally true that the GODR does not meet similar budget stipulations for the Ministry of Education, the Congress, the Municipal Governments, the UASD, the Judiciary Branch, the Attorney General’s Office, the Junta Central Electoral, the political parties, the Ministry of Youth, and other agencies and entities. Such legislative mandates present a difficult situation. If the GODR allocated all the laws’ assigned percentages to each institution or agency, the federal government would be faced with the option of not being able to invest in health care, build and repair roads and bridges, adequately invest in national

⁴² The project will have distinct efforts in: border zone, Cibao, agriculture and tourism sectors in the eastern region, and Boca Chica, Samaná, Puerto Plata, as well as the urban areas of Santo Domingo, Santiago, San Francisco de Macorís, San Pedro de Macorís, and Puerto Plata. Participating entities include: UCNE, Catholic Relief Services, FUDECO-Save the Children, Plan Internacional, Vision Mundial, Instituto Dominicano de Desarrollo (IDDI), Fundaprin, Samanenses and Fundazucar.

⁴³ The 2008 Human Rights report has the almost identical language of the 2007 report.

security, fight drug trafficking, and honor payments of the foreign debt – to name just a few examples. The specific and non-specific anti-trafficking actions and initiatives demonstrate the GODR's fundamental commitment to combat trafficking in all its forms.

Conclusion

The Dominican Republic is a destination, transit and source country for trafficking, for smuggling, and for significant quantities of undocumented migration. It is a country also facing other transnational challenges, from narcotics trafficking⁴⁴ into and through its territory to the economic reverberations of the current global situation. In these instances, however, the DR is not unique.

This Discussion Paper provides information about the nature of the trafficking situation in the DR, the GODR's challenges in confronting trafficking in persons, and the GODR's comprehensive approach in its efforts to respond. It is not about undocumented migration⁴⁵ or other economic, societal, and transnational challenges that the GODR is confronting. With respect to anti-trafficking efforts, the Discussion Paper reflects the GODR's thoughtful, steadfast, and continuing political and resource commitments to prosecution of offenses and offenders, to protection of victims, and to prevention of trafficking in persons.

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⁴⁴ See e.g., www.dominicantoday.com/dr/local/2009/4/2/31585/Pilots-in-Barahona-refinery-drug-case-get-10-years-in-prison (Neyba court on April 1, 2009 sentenced two pilots to 10 years in prison, fined each RD\$50,000 for drug trafficking, and ordered confiscation of their assets. Cocaine was in a small plane from Colombia that landed on a makeshift runway of a sugar cane field at Batey 4 of the Barahona sugar mill).

⁴⁵ E.g., on April 2, 2009, the press reported that the Dominican Navy arrested 8 people suspected of traveling with a group of 32 undocumented aliens headed to Puerto Rico from the eastern DR. Naval Intelligence Division (M-2) officers received reports about a planned illegal trip. The detainees were transferred to Intelligence Division headquarters in Santo Domingo East.